UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
11th meeting
held on
Friday, 4 October 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 11th MEETING

Chairman:	Mr. ESCOVAR SALOM	(Venezuela)
later:	Mr. MAZILU (Vice Chairman)	(Romania)
later:	Mr. ESCOVAR SALOM	(Venezuela)

CONTENTS

AGENDA ITEM 151: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.11
14 November 1996

ORIGINAL: ENGLISH

96-81270 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 151: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued) (A/51/70 S/1996/135, A/51/74-S/1996/163, A/51/84-S/1996/211, A/51/87, A/51/208-S/1996/543, A/51/210, A/51/216-S/1996/563, A/51/261, A/51/284, A/51/336, A/51/375, A/51/387-S/1996/767)

1. Mr. CALERO RODRIGUES (Brazil) said that Brazil's uncompromising rejection of terrorism reflected its aversion to violence and its profound democratic convictions. Brazil's 1988 Constitution explicitly categorized terrorist acts as serious crimes or felonies. Brazilian legislation on extradition qualified terrorism as a political crime, but in the current reform of its criminal code the Brazilian Congress was examining proposed legislation which, if adopted, would typify terrorist activity as a common felony.

2. While its region was comparatively free from manifestations of terrorism, Brazil was conscious of the need to combat other closely related crimes such as drug trafficking, arms smuggling and money laundering, and was actively involved in regional and subregional efforts to do so.

3. Brazil firmly believed that the United Nations had a decisive role to play in tackling the complex legal and political challenges involved in enhancing the effectiveness of the existing regime to combat terrorism and devising new approaches. The purposes and principles of the Charter provided useful guidance in that regard. Brazil welcomed the determination to fight terrorism expressed by the five permanent members of the Security Council in their recent ministerial declaration. If the global effort to fight terrorism was to be effective, however, it should be pursued on a multilateral basis within the United Nations. The establishment of a comprehensive legal framework dealing with all aspects of the matter deserved priority attention. Meanwhile, the international community must continue to address the underlying causes of terrorism in the social, economic and political spheres and work together to foster a culture of tolerance and peace.

4. Mr. De SILVA (Sri Lanka) said that the horrific occurrences of the past year in various places, including Sri Lanka, seemed to have awakened the somnolent conscience of the world and stimulated the international community to action with a new sense of responsibility and urgency. The recent Ministerial Conference on Terrorism attended by the foreign ministers and ministers responsible for security of the countries of the Group of Seven and the Russian Federation was evidence of that encouraging trend. Sri Lanka hoped that the new- found enthusiasm would not evaporate and that, despite the considerable difficulties, the goal of eradicating the plague of terrorism would be pursued with determination and will.

5. Terrorism which arose out of internal armed conflict, as in the case of Sri Lanka, presented particular difficulties. Such conflicts had only incidental international dimension, where another State was involved indirectly by its failure to take preventive action. In such situations where terrorism was not the consequence of State-sponsored action but rather of activity that was

tolerated in another State, the problems that arose could be said to fall somewhere between domestic law and international law and thus might even require the development of new legal principles.

6. From that point of view, the adoption by the General Assembly in 1994 of the Declaration on Measures to Eliminate International Terrorism, represented a major step forward. While the Declaration itself was of a recommendatory nature and had no binding force, its significance for the development of new legal norms could not be underestimated. By becoming a party to a solemn declaration of legal principles which also recommended a course of conduct, a State assumed the duty to comply and the obligation to act.

7. From the standpoint of terrorist acts committed in the context of an internal conflict, the 1994 Declaration embodied certain cardinal principles. First, the international community unequivocally condemned all acts, methods and practices of terrorism as criminal and unjustifiable wherever and by whomsoever committed which, inter alia, threatened the territorial integrity and security of States. Second, it accepted the principle that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes were in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that might be invoked to justify them. Those two principles affirmed the principle that the end did not justify the means. On the contrary, in such cases, the means adopted might vitiate the end.

8. Third, in discharging their obligation to eliminate terrorism, States were enjoined to refrain from, inter alia, acquiescing in activities within their territories which were directed towards the commission of such acts. That principle was even more important than the first two because it challenged the international community to take effective action and to adopt practical measures. The duty not to acquiesce in such activities meant that a State should take positive steps to prevent even the commission of acts which were preparatory to the commission of terrorist acts in another State. With respect to implementation, particular attention should be paid to the problem of proof when it came to the operation of clandestine organizations. Once an organization had been shown to engage in terrorist activity in one country and there was cogent evidence of such involvement, its designation as a terrorist organization in the country where acts were committed should be prima facie evidence, if not conclusive proof, anywhere in the world, of the nature of its activities and sufficient to include, for purposes of liability, front organizations and other devices set up to conceal its true identity.

9. The prohibition against the financing by States of terrorist activities should include the act of permitting the collection by any non-State entity of funds intended to benefit a terrorist organization. The concept of terrorist installations should include establishments operating as "liaison offices" or "information offices" which, apart from disseminating false propaganda and inciting or encouraging terrorism, were also secretly engaged in the preparation of terrorist acts.

10. One of the principal causes of the continuance of terrorist movements was the sustenance they received from hard-core supporters and sympathizers resident abroad who exploited rights granted under the 1951 Convention relating to the Status of Refugees. The extreme laxity in enforcing the provisions concerning conditions of entry had led to enormous problems both for the countries that had indiscriminately admitted such persons and for their countries of nationality. It was therefore necessary to re-examine the whole question of the granting of refugee status and, even after an asylum seeker was admitted to a State, to maintain strict surveillance of his subsequent activities. The conditions for expulsion from the admitting State or return to the country of origin also needed to be considered in the light of both the current and potential danger arising from his continued stay in the receiving State as well as from the State in which he had sought refuge.

11. It was clear that the widespread phenomenon of vast sums being contributed by so-called refugees represented the gross distortion of a system of protection into an engine of oppression against the State of origin and its people. In such cases, the protecting State had unwittingly become a provider for those who sought to terrorize and torment the people of the country from which they had emigrated.

12. While welcoming the several initiatives that had been taken, especially by the Governments of the United States of America, the United Kingdom and France, to address the problem, his delegation noted that certain issues, such as the problem of suicide bombers, had not yet received sufficient attention, although it was difficult to see how the international community could deal with such a pathological phenomenon.

13. Terrorism was a crime against humanity, and it was ironic that those who professed to be liberators seemed to be overly concerned with the punctilious observance of lesser human rights when the supreme right, the right to life, was at stake. The international community must therefore formulate clear principles to combat the evil in their midst. His delegation unreservedly supported the initiatives before the Committee and hoped that its efforts would result in a convention which would receive general acceptance from the international community.

14. Mr. Mazilu (Romania), Vice-Chairman, took the Chair.

15. Mr. BAALI (Algeria) said that only after the problem of international terrorism had reached unprecedented proportions and countries like his own had fought it alone for many years had it finally been acknowledged that international terrorism recognized no frontiers and was not linked to a particular civilization, religion or geographical area. The challenge currently before the international community was to cooperate in implementing effective measures to combat that scourge. Although the adoption of the Declaration on Measures to Eliminate International Terrorism had been a hopeful sign, concrete day-to-day action was still necessary. Unfortunately, international terrorism fed on the persistent lack of a coordinated response and even the tolerance of such activities. The commitment of States to strengthening bilateral, regional and international cooperation was the basic requirement for the success of international efforts.

16. The actions described in the Secretary-General's report (A/51/336) were an initial step in mobilizing the international community to deal with that issue. In the view of his delegation, however, paragraph 8 of General Assembly resolution 50/53 had not been taken fully into consideration. His delegation, along with many others, had supported the elaboration of a general legal instrument or framework convention covering all aspects of terrorist activity, rather than the current fragmented approach. Such an instrument would also cover new forms of terrorism which had not been foreseen when the existing conventions had been drafted.

17. Algeria believed that an international institutional framework for combating terrorism was needed. His delegation supported the United States call for a convention on terrorist bombing and the establishment of working groups for its elaboration. Joint efforts to combat terrorism required greater solidarity and cooperation in order to be successful.

18. Mr. PELEG (Israel) said that for years, the ability to combat international terrorism effectively had been hampered by two fundamental misconceptions: that certain goals could justify or mitigate acts of terrorism and that, in the war against terrorism, neutrality was a viable option.

19. For decades, apologists had tried to convince the world that certain goals were so hallowed that terrorist acts could be justified in their pursuit. There was a growing consensus in the international community, however, that no goal could legitimize the murder of civilians and other innocents. Moreover, the international community was recognizing that those who used cherished goals as justification for their crimes were actually doing a grave injustice to those goals.

20. However, the second misconception - that neutrality was a viable option in the war against terror - remained far too prevalent. Neutrality could take the form of granting sanctuary to terrorists and their supporters, permitting the free flow of funds and traffic in arms and matériel used in terrorist attacks, or turning a blind eye to the use of diplomatic missions for terrorist communications.

21. With the recognition that terrorism, whatever its motive, was criminal and unjustifiable and that every State unwilling to be an accomplice to terrorism must actively oppose it, international cooperation against terrorism must focus on three areas. First, individual States must enact effective anti-terrorist legislation. When terrorist activity did occur, States must be persistent in ensuring that those involved were brought to justice. Second, terrorist organizations had long recognized that they could only function effectively with a worldwide network of cooperation and informational exchange. The international community had been slow to realize that it must respond in kind. Only through concerted action could it obtain all the information and experience required to eliminate the infrastructure that supported terrorism. Lastly, States which created an atmosphere in which terrorism could flourish must be made to pay the price. Concurrently, the international community must recognize that for some States, the fight against terrorism required extraordinary courage, and those States must be shown that they did not stand alone.

22. His delegation was disappointed by the attempts of certain Member States to use the current debate as a forum for advancing a political agenda. Terrorism was a global problem faced by all, regardless of race, nationality or religion. The proponents of terrorism had many tools at their disposal, but there were two without which they could not function: disunity among States and a lack of will in the international community. If it deprived terrorists of those tools, then together the international community would win the battle.

23. Mr. AL-HAYEN (Kuwait) recalled that the terrorist acts witnessed on Kuwaiti soil in recent years had been followed by the Iraqi invasion in 1990, which represented a highly repugnant form of terrorism with no modern precedent that continued to have a damaging impact on the entire region. The Iraqi regime continued to delay implementation of the relevant Security Council resolutions and was forcibly holding more than 600 Kuwaitis captive.

24. In view of its cruel experiences of terrorism, Kuwait was at the forefront in demanding that such criminal acts, which hindered development and consumed human and material resources, should be countered with firm resolve. It shared the concern generated by the recent general rise in terrorism and called for increased efforts to combat and eliminate the phenomenon. International solidarity was a crucial means of achieving that end. Bilateral, regional and international cooperation should therefore be undertaken to devise effective practical measures with a view to condemning terrorism and its perpetrators, maintaining the integrity and sovereignty of States, complying with obligations under international law to surrender terrorists and pooling information on such terrorists.

25. Mr. SERGIWA (Libyan Arab Jamahiriya), citing the pernicious effects of terrorism, said it was only natural that the General Assembly should pursue its efforts to uproot that danger, as innocent victims continued to pay the price for the international community's failure to do so. His own country was still prey to the terrorist practices of certain advanced States and was also subjected to various threats and pressures.

26. The Libyan Arab Jamahiriya condemned all direct and indirect forms of State terrorism, particularly those aimed at imposing control over other peoples. It had endorsed United Nations resolutions aimed at combating all forms of terrorism and had acceded to most international conventions relating to offences and acts committed on board aircraft. In addition, its internal legislation imposed the heaviest penalties on the perpetrators of terrorist crimes.

27. His country had requested the convening of a special session of the General Assembly with a view, inter alia, to defining international terrorism. He recognized the difficulties entailed in arriving at a definition that was acceptable to all States, some of which believed that it ought to include legitimate popular armed struggle for self-determination and freedom from foreign domination and occupation. The use of economic embargoes and nuclear arsenals to subdue States into submission should also be taken into account, as they were highly dangerous forms of terrorism and violated the basic principles of international law, particularly non-interference in the internal affairs of States.

28. His delegation hoped that the international community would be successful in addressing and eliminating the causes of terrorism. To that end it advocated strengthening exchanges of technical and legal assistance with a view to creating an international climate where all peoples could live in security, peace, equality and cooperation.

29. Mr. LAVALLE (Guatemala) said that the gravity of the problem of terrorism in the modern world could not be overestimated. There was also no way that terrorism could be idealized - there was neither nobility nor heroism in acts of violence whose intentional consequences were indiscriminate murder or mutilation of innocent human beings.

30. As terrorists had exploited the vulnerabilities of modern technology in committing their destructive acts, so the international community must make use of every possible technological advance to strike at the vulnerabilities of terrorist organizations.

31. Comprehensive action against terrorism must cover all aspects of human activity. The Secretary-General's report had described impressive developments in the international community's efforts to eliminate terrorism. The proposals put forward by the United States of America, the Russian Federation and the United Kingdom also merited further study. It would be helpful if, in his next report, the Secretary-General could provide updated information on reservations and declarations made by States parties to the international conventions against terrorist activities.

32. Mr. WENAWESER (Liechtenstein) regretted the persistence and increase of terrorist incidents, all of which his country unequivocally condemned on account of their negative impact on human rights and fundamental freedoms and, ultimately, international peace and security. He therefore noted with satisfaction the growing commitment to regional and international cooperation to fight and prevent terrorism. He fully supported the milestone Declaration on Measures to Eliminate International Terrorism, the application of which would bring the end goal much closer. Further action was still required, however.

33. In that connection, he noted with interest the proposals made, including the proposal by the United Kingdom that a further declaration on the topic should be adopted. However, bearing in mind the different forums in which terrorism was currently being discussed, an inconsistent approach that could bring contradictory results should be avoided. In his view, the Sixth Committee should remain the body that dealt with United Nations efforts to combat terrorism.

34. Liechtenstein had consistently rejected the notion that terrorists violated human rights. The principle that States were responsible for protecting human rights should not be undermined, although discussions on terrorism clearly did have a human rights dimension. Further measures to combat terrorism should be consistent with existing human rights standards and thus preserve the balance between those measures and the promotion and protection of human rights and freedoms. In that connection, he fully supported the United Kingdom view that the Sixth Committee should not take any decisions which could be construed as an attempt to amend the aforementioned Declaration. He also endorsed the

established interpretation and practice concerning the exclusion clauses and non-refoulement provisions of that important legal instrument and looked forward to continuing informal consultations on the matter.

35. Mr. AL-THANI (Qatar) said that terrorism was growing ever more dangerous and complex as a result of its links to organized crime, the illegal arms trade, drugs trafficking and high technology. Moreover, terrorists could potentially acquire nuclear technology and materials. The international community was responsible for combating terrorism. The Declaration on Measures to Eliminate International Terrorism was thus a prerequisite for the drafting of an international legal instrument to address terrorism in general, a task which should fall to the Sixth Committee and the International Law Commission. For its part, Qatar had acceded to most international conventions relating to terrorism and attached great importance to them.

36. Mrs. DASKALOPOUPOU-LIVADA (Greece) said that her delegation fully subscribed to the statement on the item made by the representative of Ireland. She then recalled the killing of 18 innocent Greek citizens in Egypt in April 1996 and expressed the hope that the Egyptian authorities would bring the perpetrators to justice.

37. Greece was party to all the relevant United Nations conventions relating to terrorism and strictly adhered to the obligations arising therefrom. Her delegation was prepared to study further initiatives aimed at combating terrorism, provided that they did not prejudice human rights and fundamental freedoms or offer pretexts for their violation. Future efforts to combat terrorism should continue to be guided by that principle.

38. Mr. AL-ADHAMI (Iraq) said that Iraq condemned terrorist acts and that its internal laws punished those who perpetrated or abetted such acts. It supported all efforts to combat terrorism and believed that an international conference should be held to achieve a definition of terrorism that was acceptable to all States with a view to ensuring that certain delegations made no further attempts to alter the concept. A distinction should be made between terrorist acts and the right of peoples to self-determination and to resist occupation, as affirmed in various United Nations resolutions. Any definition of terrorism should also take into account the use by States of technologically sophisticated means which caused infrastructural damage and spread fear with a view to imposing control. The victims of such forms of terrorism were far more numerous than those of terrorist acts committed by individuals. Under no circumstances, however, should measures to combat terrorism prejudice fundamental human rights principles. It was also essential that all discussions of terrorism should address State terrorism, as certain States organized and financed terrorist operations with a view to destabilizing and toppling regimes in other States. Many innocent victims had been killed during the course of such operations in Iraq.

39. He wished to remind the representative of Kuwait of the Kuwaiti Government's policy and actions towards Iraq, of which he was apparently unaware. The Kuwaiti Government financed and supported gangs of outlaws whose terrorist acts in Iraq, aimed at destabilizing the regime, had killed many innocent civilians. It also financed the imposition of the no-flight zones in

northern and southern Iraq, which was a unilateral and illegal decision unrelated to the relevant United Nations resolutions. Kuwait was thus violating its obligations under international law and the Charter of the United Nations. The country was also the centre of preparations for military aggression against Iraq, which represented a further violation of the Charter. Such examples shed light on the terrorist policy pursued by the Kuwaiti Government, whose representative decried acts of terrorism while forgetting those committed by his own Government.

40. Mr. MUABEZI (Indonesia) said that, in the light of the alarming increase in international terrorism in recent years, his delegation supported the speedy implementation of the Declaration on Measures to Eliminate International Terrorism, adopted by the General Assembly in 1994. His country had consistently condemned international terrorism as a criminal activity, whether committed by individuals or by groups of States. The menace of terrorism could be dealt with only through concerted action; it was therefore vital for States to enhance international cooperation at all levels and to implement fully the relevant bilateral and international agreements. He recalled that the Movement of Non-Aligned Countries had called, at its eleventh summit, in 1995, for the urgent conclusion and effective implementation of a comprehensive international convention on counter-terrorism.

41. The report of the Secretary-General (A/51/336) provided a firm basis for further deliberations on the topic. His delegation noted with satisfaction that the United Nations Educational, Scientific and Cultural Organization (UNESCO) had contributed to eliminating the root causes of terrorism by raising public awareness of the dangers posed by various conflicts. The UNESCO Culture of Peace Programme and the programme on education for peace, human rights, democracy and international understanding were of particular importance. It was also appropriate that, within the framework of the United Nations Year for Tolerance (1995), UNESCO had been mandated to hold regional meetings, concerts, broadcasts and festivals aimed at the progressive elimination of terrorism.

42. Mr. Escovar Salom (Venezuela) resumed the Chair.

43. Ms. ZABAIDAH (Brunei Darussalam) expressed appreciation for the information contained in the Secretary-General's report (A/51/336). Her country, like any other country, abhorred terrorism in all its forms and manifestations. Adherence to the existing international instruments on counter-terrorism was crucial to enhancing the efforts to eradicate international terrorism, and cooperation at all levels would further enhance the effectiveness of such efforts. Her delegation was keenly interested in the offer made by some delegations to provide their expertise in implementing the existing conventions. In addition, her delegation was studying the United Kingdom proposal.

44. Mr. BENITEZ SAENZ (Uruguay) said that his delegation, while fully concurring with the views expressed at the previous meeting by the representative of Bolivia on behalf of the Rio Group, wished to emphasize several points.

45. The Secretary-General's report (A/51/336) provided a valuable summary of the efforts to eliminate the scourge of terrorism through cooperation between

States within the framework of international law. His country was participating actively in the various international forums on the topic, and was doing its part to pursue the perpetrators of terrorist acts. Such acts undermined both democratic institutions and economic development in the Latin American region and worldwide.

46. He wished to reaffirm his delegation's view that, in accordance with the principles embodied in the Charter of the United Nations, the fight against terrorism must be carried out with respect for the human rights of the perpetrators of such acts. It was possible to strengthen international cooperation in that area without detriment to the sovereignty of each State. The 24 measures recommended by the Ministerial Conference on Terrorism (A/51/261) provided a useful basis for such cooperation.

47. His delegation further endorsed the suggestion made in the Secretary-General's report that a convention should be drafted to deal specifically with the threat of terrorist bombings. Furthermore, the international community must use every means at its disposal to prevent terrorists from being able to use nuclear weapons to achieve their criminal ends.

48. Lastly, his delegation wished to express its appreciation to the United Kingdom for its proposal and was prepared to work with other delegations to ensure that the proposal obtained the necessary consensus.

49. Mr. KULYK (Ukraine) said that his country resolutely condemned international terrorism in all its forms and manifestations. Terrorist acts could not be justified, regardless of their purpose or by whom they were committed. Those who incited and perpetrated such acts should be brought to justice. In that connection, his delegation wished to stress the importance of the Declaration on Measures to Eliminate International Terrorism.

50. Often linked to other criminal activities such as the illegal arms trade, drug trafficking and money laundering, terrorism knew no boundaries, and no one State was safe against it; effective and concerted international cooperation was therefore essential. His country had always participated actively in the activities undertaken within the framework of the United Nations to develop and implement measures to prevent international terrorism and to punish its perpetrators. Nevertheless, more efficient international cooperation in that area depended largely on the actions taken by States at the national level.

51. Ukraine was already a party to most of the conventions and protocols mentioned in the preamble to the Declaration on Measures to Eliminate International Terrorism. In addition, Parliament was considering draft legislation which would enable Ukraine to ratify the Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection.

52. The time had come to change the practice of introducing an international legal instrument pertaining to international terrorism only after significant international incidents had already taken place. For that reason, his delegation endorsed the suggestion contained in paragraph 36 of document A/51/336 concerning the need to promulgate international treaties in areas which were not covered by existing treaties.

53. His delegation wished to express its appreciation to the delegations of the Russian Federation, the United Kingdom and the United States of America for their initiatives designed to strengthen international cooperation in the field of counter-terrorism. The proposals concerning the possible elaboration of two new conventions on the suppression of terrorist bombings and of nuclear terrorism, and the drafting of a further declaration in implementation of the 1994 Declaration deserved serious consideration.

54. Lastly, the international Convention on the Safety of the United Nations and Associated Personnel contained provisions for instituting criminal proceedings against persons accused of attacking United Nations peacekeepers. His delegation called upon all States to ratify or accede to that Convention so as to permit its early entry into force.

55. Mr. ELARABY (Egypt) said that terrorism could not be linked exclusively to any particular geographical region, civilization, culture or religion; the distorted thinking from which it stemmed could be found even in the most stable and prosperous of environments. In recent years, it had taken on forms that had the outward appearance of legitimacy while carrying within them the seeds of malignancy.

56. Some countries and Governments were still sponsoring terrorism, and they provided terrorists with financial support and permitted them to use their territory as a base and a shelter in order to achieve political goals and undermine the stability of other countries.

57. Terrorism in all its forms was a flagrant violation of the purposes and principles of the Charter of the United Nations; it jeopardized friendly relations between States, posed a threat to international peace and security, impeded international cooperation and undermined human rights and fundamental freedoms. State terrorism also found expression in the illegal acts committed by occupying forces against peoples under occupation. In that connection, the acts of violence that had recently taken place in the occupied Palestinian territories, resulting in 70 casualties, of whom 60 had been innocent Palestinian civilians, could only be deplored. Such actions could not solve problems but could only widen the gulf between the parties.

58. In seeking to eliminate terrorism, the international community must take full account of the rights guaranteed by international law to peoples under foreign occupation and of their right to self-determination. To overlook such rights might in itself give rise to desperation and despair.

59. On 31 January 1992, following the meeting of the Council at the level of Heads of State and Government, the members of the Council had expressed their deep concern over acts of international terrorism and had emphasized the need for the international community to deal effectively with all such acts. Member States must make a concerted effort to implement the provisions of the Declaration on Measures to Eliminate International Terrorism and of the numerous conventions that addressed different aspects of terrorism. His delegation supported the suggestion that the Assembly should adopt a declaration on the question of political asylum at its current session as a means of promoting the

implementation of the 1951 Convention relating to the Status of Refugees and of ensuring that it would not be used by terrorists to escape punishment.

60. The elimination of terrorism would require: adherence to the principles embodied in the Charter of the United Nations; the political will of all States to prevent terrorism and to implement the conventions that laid the groundwork for a coherent legal regime to deal with the problem; increased cooperation in the exchange of information on terrorism and the apprehension and punishment of terrorists; the equal treatment of all acts of terrorism, regardless of the nationality of the perpetrators or the place the crime was committed; the avoidance of a double standard in dealing with domestic terrorism and international terrorism on the grounds that the former was less serious than the latter; a commitment not to shelter, train, finance or encourage terrorists or incite them to commit terrorist acts in other States; the establishment of clear criteria to differentiate between acts of terrorism and the exercise of the political freedoms guaranteed to individuals by international conventions and national constitutions; and the adoption of measures to ensure that persons seeking asylum had not participated in terrorist acts in another country.

61. The international community must cooperate in finding the necessary resources to confront and eliminate terrorism and isolate those who promoted and encouraged it. It was important to preserve the consensus achieved at previous sessions in considering the item, and his delegation would spare no effort to achieve that goal. It was to be hoped that there would be a prompt response to the call by the President of Egypt for the convening of an international conference on terrorism and its elimination.

62. Mr. WANG Xuexian (China) said that his Government had always opposed international terrorism in all its forms and manifestations. Since terrorist activities were international in nature, his Government believed that States must strengthen cooperation among themselves, abide strictly by their international obligations and implement effective measures to prevent and eliminate terrorist acts. At the same time, the international community should study the root causes of international terrorism and the social basis for its existence and development, with the aim of gradually reducing and eliminating it through joint efforts.

63. His Government had taken a number of significant steps to combat international terrorism. First, it had acceded to three international conventions on the prevention of aerial hijacking, along with other international conventions. In 1984 China had joined the International Criminal Police Organization (INTERPOL), strengthening cooperation with police authorities in other countries to prevent and punish crimes, including international terrorist activities. Second, China had enacted domestic legislation providing an effective foundation for preventing, combating and eliminating international terrorist activities. Third, a set of measures had been adopted to strengthen border controls and to safeguard internationally protected persons and aviation. A special agency had been established to conduct investigation and research into the patterns and characteristics of international terrorist activities and to promote data exchanges and cooperation among States in the field of counter-terrorism.

64. Since the origins, evolution and background of international terrorism were extremely complex, the international community had not yet reached a consensus on a legal definition of the concept. That situation hampered concerted international action and effective cooperation between States.

65. His Government opposed any infringement of the sovereignty, territorial integrity and national unity of States or interference in the internal affairs of other States in the name of combating international terrorism. In accordance with universally recognized principles of international law, every State was entitled to exercise its inalienable right to self-determination by appropriate means.

66. Mr. DAHAB (Sudan) reaffirmed his delegation's condemnation of terrorism in all its forms and manifestations. Terrorist acts could not be justified on any pretext whatsoever.

67. As the Committee had been charged with the task of developing effective measures to combat terrorism, his delegation proposed that the Organization should: urge States to ratify the existing regional and international treaties on combating terrorism; fill the gaps in the international legal framework by adopting conventions to cover areas not yet dealt with in existing treaties, such as drug trafficking, terrorist bombings and the poisoning of drinking water; and condemn the activities of groups that resorted to violence in order to advance their political aims and depriving such groups of propaganda opportunities.

68. His delegation stressed the importance of defining terrorism so that acts of terrorism which were universally condemned would not be confused with legitimate acts of self-defence recognized in the Charter of the United Nations. A definition of terrorism would prevent the use of terrorism as a political expedient and a means of exerting pressure on States to change their policies.

69. Among the measures recommended by the Ministerial Conference on Terrorism was the exchange of information among States regarding terrorist acts. The lack of such exchanges had complicated the efforts to investigate the assassination attempt directed against the President of Egypt in June 1995. His Government had vehemently condemned that act and had expressed its continuing desire to cooperate with all parties with a view to resolving the matter.

70. If terrorism was to be eradicated, its root causes must be eliminated. That could not be achieved by legal instruments alone. His delegation was grateful to UNESCO for its ambitious programme to combat terrorism by spreading a culture of peace. It was important to avoid labelling certain cultures as promoting terrorism, since all cultures condemned terrorism.

71. Mrs. KALEMA (Uganda) said that terrorism violated fundamental human rights and threatened the sovereignty and territorial integrity of nations as well as international peace and security. Uganda strongly condemned all acts of terrorism irrespective of the motivations and the perpetrators involved. During the past year, tensions had increased in the Middle East, the situation in Burundi had become more volatile and various other terrorist attacks had taken place, as the Secretary-General had noted in his report (A/51/336). Many more

terrorist acts had gone unreported. The international community must therefore reaffirm its commitment to combating terrorism in all its forms and manifestations, and the United Nations must consider practical measures to prevent that scourge.

72. The Declaration on Measures to Eliminate International Terrorism was a significant step in the right direction. The Declaration condemned all acts of terrorism as criminal and unjustifiable and put States under the obligation not to condone terrorism and to take appropriate measures at all levels to eliminate it. The General Assembly should build upon the progress made since the adoption of the Declaration in 1994 and continue to urge States to take effective measures against terrorism.

73. The need for States to become parties to the Conventions against terrorism and to implement them was of paramount importance. A high level of participation in those instruments not only enhanced international cooperation but also ensured that those found guilty of terrorist crimes would not find safe haven anywhere in the world. Uganda was examining the instruments which it had not yet ratified with a view to becoming a party to them and urged other States to do likewise.

74. Effective regional cooperation and coordination through the sharing of information, prosecution or extradition of those accused of terrorist acts, law enforcement and legal assistance would also contribute significantly to the elimination of terrorism. The Government of Uganda remained ready to work with other States towards the achievement of that objective.

75. Mr. PETRELLA (Argentina) said that the subject of terrorism had special resonance in Argentina, which in recent years had been the victim of two brutal acts of terrorism that had resulted in great loss of life. Those acts had demonstrated that in today's interdependent world, neither distance nor frontiers made any nation secure from the global scourge of terrorism.

76. The fight against terrorism required, first of all, a firm commitment on the part of every State to cooperate and coordinate its efforts to combat terrorist acts at the national level, not to provide assistance, refuge or support to the perpetrators or participants in terrorist activities, and to strengthen and develop its national legislation to include provisions for the prosecution or extradition of the authors of such acts.

77. It was for those reasons that his Government had during the previous year invited other South American States, the United States of America and Canada to participate in consultations aimed at strengthening their cooperation for the prevention and elimination of international terrorism. Officials in various areas of competence had taken part in the consultations, at which national experiences had been exchanged and the threat posed by terrorism from various sources had been examined.

78. In March 1996, Argentina, Brazil and Paraguay had signed an agreement to prevent and combat terrorism in the frontier areas of the three countries. The following month, an Inter-American Specialized Conference on Terrorism had been held in Lima, Peru, which had concluded with the adoption of the Lima

Declaration and a plan of action for hemispheric cooperation. All of those initiatives were aimed at adopting specific and practical measures to promote the exchange of information and cooperation by judicial, police and intelligence authorities for the prevention and punishment of terrorist activities within a framework of democracy.

79. Many and varied instruments had been adopted at the international level to strengthen international cooperation against terrorism. Among the most recent initiatives, Argentina welcomed the final document adopted at the Ministerial Conference on Terrorism of the countries of the Group of Seven and the Russian Federation and the Sharm-el-Sheik Statement. Also of value was the statement on terrorism made by the Ministers for Foreign Affairs of the five permanent members of the Security Council on 26 September 1996. It was imperative to secure due respect for and universal participation in the numerous existing international conventions.

80. Argentina was convinced that the United Nations had a vital role to play. The Security Council and the General Assembly bore special responsibility for coordinating international action against terrorist acts, which represented a clear threat to security. In keeping with that conviction, Argentina had drawn the Council's attention in 1994 to the cruel attack on the headquarters of a Jewish association which had taken place in July of that year. He regretted that the Council had not seen fit to convene a formal meeting to discuss that act, which, by virtue of its nature and massive scale, merited consideration by that organ of the international community.

81. With respect to the role of the General Assembly, Argentina welcomed the adoption in 1994 of the Declaration on Measures to Eliminate International Terrorism, the most unequivocal condemnation of international terrorism ever pronounced by that body. His delegation also took note of the important new proposals for combating terrorism that had been put forward during the current session.

82. Mr. DANESH-YAZDI (Islamic Republic of Iran) welcomed the Secretary-General's report (A/51/336), which provided a useful basis for discussion.

83. During the past 15 years, his country had witnessed many different forms of terrorism directed against the Iranian people, government officials, public places and places of worship, as well as sabotage, aerial hijackings and attacks on Iranian diplomatic agents and premises in other countries. However, terrorism was not confined to certain countries or regions; it posed a serious threat to all countries, regardless of their military power, economic development and geographical location, and therefore required a concerted international response.

84. First, combating terrorism required the adoption of a comprehensive approach at the national, regional and international levels. A sectoral approach to the problem, which appeared to have gained support in some segments of the international community, might bring limited success in some areas, but could not be a panacea.

85. Second, the definition of terrorism had long been a thorny issue for the international community. So long as certain basic principles of international relations were disregarded by some members of the international community, power politics would prevail, and the purposes and principles of the Charter of the United Nations would be diminished. Nevertheless, counter-terrorism efforts must take account of the struggles of peoples under foreign oppression and occupation.

86. Terrorism jeopardized internaticnal cooperation and relations between States. Not only groups and individuals were guilty of terrorist acts, however. A State which harboured or assisted organizations and persons involved in terrorist activities or which allocated funds for covert or subversive operations against other States not only engaged in State terrorism but also undermined global efforts to combat the scourge. All States must categorically condemn and reject terrorism in all its forms and manifestations, regardless of the identity of the victims or the political tendencies and objectives of the perpetrators. States must refuse to provide safe haven for terrorists and terrorist organizations. Unfortunately, the refugee systems of some States had been exploited by certain well-known terrorists and their networks in order to escape apprehension and prosecution.

87. More than rhetoric, global efforts to eliminate terrorism required seriousness and political will. States should refrain from levelling politically motivated accusations or engaging in baseless and unsubstantiated propaganda against other States, groups or regions. Such practices did not help to resolve the problem of terrorism and did a disservice to the international effort to deal with it.

88. The Islamic Republic of Iran was a party to most of the conventions mentioned in the Secretary-General's report and was committed to its obligations under them. It had developed and implemented certain measures at the regional level to combat terrorist activities in the area. The eradication of that evil phenomenon, however, was beyond the capability of a single country and required global cooperation and coordination. His delegation was committed to participating actively in global efforts to combat terrorism. Accordingly, while it would welcome any initiative aimed at consolidating existing measures to that end, it hoped that the Committee would reach consensus through constructive deliberations on proposals, taking into account the concerns of all Member States.

89. Mr. GHASSAN (Syrian Arab Republic) said that his country disapproved of all forms of terrorism, whether committed by individuals or States, and especially of the terrorism in which Israel engaged in the occupied Palestinian territory, southern Lebanon and the occupied Syrian Golan. Israel continued to defy international law by refusing to withdraw from those areas and to accept a Palestinian State. However, the right of peoples to engage in legitimate struggle against occupation and for self-determination by whatever means they deemed appropriate was embodied in the Charter of the United Nations and had recently been reaffirmed in the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations.

90. To speak of terrorism in the context of legitimate resistance to foreign occupation was to deceive world public opinion. On the other hand, the use of violence for its own sake was incompatible with humanitarian ideals and was properly termed "terrorism"; it was thus to be condemned in all its forms. His country had always insisted on the formulation of a clear definition of terrorism because it had itself suffered greatly from the phenomenon and continued to suffer from it in the occupied Arab territories.

91. Consideration of the issue of international terrorism had long been hampered by the absence of well-defined and internationally agreed criteria to enable the international community to differentiate clearly between terrorism and legitimate national struggle. His delegation believed that terrorism could be defined as the commission of acts of murder, assassination, bombing, hostage-taking or the seizure of aircraft or ships in order to provoke a state of terror for political purposes, whether by individuals or States and whether against other individuals or other States, in circumstances other than those of legitimate armed conflict for liberation from all forms of foreign domination or from colonial, occupying, racist or other forces, and, in particular, when undertaken by liberation movements recognized by regional and international organizations.

92. The Palestinians, who had been deprived of their homeland by Israel and scattered among Arab and other countries, could not be regarded as terrorists because they were defending their land and their people against occupation. The situation was the same with respect to the resistance in southern Lebanon, which had been occupied ever since the 1982 Israeli incursion: such resistance was legitimate. It was Israel's actions and its failure to withdraw despite the relevant Security Council resolutions that constituted acts of terrorism. In the last week of September 1996 some 80 Palestinians had been shot dead by the Israeli army, further proof that occupation was the most extreme form of terrorism.

93. For many years his country had been calling for the convening of an international conference under United Nations auspices to define terrorism and differentiate between it and the struggle of peoples for national liberation. It had also called for the establishment of a committee on the definition of terrorism and had expressed its readiness to cooperate in the work of that body. Those who maintained that such a conference would be of no avail and that it would be impossible to arrive at consensus were in reality rejecting international cooperation to combat terrorism and sought only to impose their own erroneous definition of the phenomenon.

94. His country had acceded to the Tokyo Convention of 1963, the Hague Convention of 1970, the Montreal Convention of 1971 and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and its laws imposed strict penalties on perpetrators of criminal terrorist acts. It looked forward to the elimination of violence in the Middle East through the implementation of Security Council resolutions 242 (1967), 338 (1973) and 425 (1978) and the establishment of a just and comprehensive peace as the sole guarantee of security.

95. Mr. PFIRTER (Observer for Switzerland) noted that during the previous year terrorism had shown the world of just what hideous acts it was capable. His Government therefore welcomed the proposals put forward by France, the Russian Federation, the United Kingdom and the United States of America to combat that scourge, and particularly the proposal to elaborate a convention for the suppression of terrorist attacks involving the use of explosives and nuclear terrorism.

96. It was important to prevent the abuse by undeserving individuals of the right to asylum. Those who were champions of cruelty to other human beings must be prevented from undermining the august humanitarian institution of the right to asylum. Switzerland therefore supported the aims of the declaration proposed by the United Kingdom.

97. While his country was not a member of the Organization and could not therefore presume to suggest what action it should take in a particular field, it was a party to the 1951 Convention relating to the Status of Refugees. On that basis, and given its long humanitarian tradition, Switzerland questioned whether certain paragraphs of the proposed declaration did not run the risk of reinterpreting certain provisions of the Convention which, historically, had been quite clear. Any reinterpretation which modified the provisions of the Convention would be tantamount to an amendment thereto, something that could only be undertaken by the bodies specified in the Convention itself. He welcomed the statement by the representative of the United Kingdom that that was not the aim of the proposed declaration. Switzerland was of the view, however, that the aims of the declaration could best be achieved on the basis of the established interpretation of the 1951 Convention. The international community must not allow the urgency of the task of combating terrorism to lead it to violate other key principles of international relations.

The meeting rose at 1.25 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION
Official Records

SIXTH COMMITTEE
12th meeting
held on
Monday, 7 October 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 12th MEETING

Chairman: Mr. ESCOVAR SALOM (Venezuela)

Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses: Mr. YAMADA

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.12
15 November 1996

ORIGINAL: ENGLISH

96-81288 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

1. The CHAIRMAN recalled that, in its resolution 49/52, the General Assembly had decided that at the beginning of its fifty-first session, the Sixth Committee should convene as a working group of the whole, from 7 to 25 October 1996, to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission and in the light of the written comments and observations of States and views expressed in the debate at the Assembly's forty-ninth session. The Group of Asian States had nominated Mr. Yamada (Japan) for the office of Chairman of the Working Group of the Whole.

2. Mr. Yamada (Japan) was elected Chairman of the Working Group of the Whole by acclamation.

3. Mr. Yamada (Japan) took the Chair.

Adoption of the agenda of the Working Group of the Whole (A/C.6/51/NUW/L.1)

4. The agenda was adopted.

Election of the Chairman of the Drafting Committee

5. Mr. YAMADA (Chairman of the Working Group of the Whole) said that the Group of Western European and Other States had nominated Mr. Lammers (Netherlands) for the office of Chairman of the Drafting Committee.

6. Mr. Lammers (Netherlands) was elected Chairman of the Drafting Committee by acclamation.

7. Mr. YAMADA (Chairman of the Working Group of the Whole) recalled that, in its resolution 49/52, the General Assembly had requested the Secretary-General to arrange for the presence of the Special Rapporteur on the law of the non-navigational uses of international watercourses as an expert during the debates on the topic at its fifty-first session. He therefore invited Mr. Robert Rosenstock, who had been the Special Rapporteur when the Commission had adopted the draft articles on that topic, to take a place at the Committee table as expert consultant.

8. Mr. Rosenstock took a place at the Committee table.

Organization of work

9. Mr. YAMADA (Chairman of the Working Group of the Whole) recalled that the annex to General Assembly resolution 49/52 set out the procedure to be followed by the Working Group in elaborating the framework convention. The Working Group

was to start at once with a discussion of the draft articles on an article-by-article basis, without prejudice to the possibility of simultaneously considering closely connected articles. Once considered by the Working Group, each article or group of articles should be referred to the Drafting Committee for examination in the light of the discussion. The Drafting Committee should make recommendations to the Working Group in relation to each article or group of articles. It should also prepare and present to the Working Group, for its approval, a draft preamble and a set of final clauses. The Working Group should endeavour to adopt all texts by general agreement. Failing such an agreement within a reasonable period of time, it would take its decisions in accordance with the rules of procedure of the General Assembly.

10. In preparation for the current meeting, the Legal Counsel had convened informal consultations with representatives of the Permanent Missions to the United Nations, which had resulted in the formulation of recommendations concerning methods of work. In particular it had been recommended that the Drafting Committee should be open-ended and that in order to facilitate maximum participation by all interested delegations there should be no simultaneous meetings of the Working Group and the Drafting Committee. Furthermore, it had been considered that it would be prudent to divide the draft articles into clusters for the purpose of discussion in the Working Group. After each cluster had been discussed, it would be sent to the Drafting Committee. When appropriate, coordinators would be designated to conduct informal consultations on controversial issues. A draft preliminary programme of work covering both the Working Group and the Drafting Committee was being circulated for consideration.

11. Mr. LEGAL (France), speaking on a point of order, said that the informal consultations had not resulted in any recommendations.

12. The CHAIRMAN said that he would take note of the observation made by the representative of France.

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (A/49/10 and A/49/355; A/51/275 and Corr.1 and Add.1)

Cluster I (articles 1, 3 and 4)

13. Mr. MANNER (Finland) recalled that General Assembly resolution 2669 (XXV), which had recommended that the International Law Commission should take up the study of the law of the non-navigational uses of international watercourses, had resulted from a Finnish initiative. In advocating codification of that law or endorsing the Helsinki Rules, the Government of Finland had not been motivated by special reasons or national interests, since questions relating to the use and maintenance of Finland's border watercourses had already been satisfactorily regulated at that time through bilateral agreements with its three neighbouring States.

14. In its explanatory memorandum of 1970, the Government of Finland had presented several reasons why rules of international law regulating the use of international watercourses should be further developed and codified. The rapid and continuing growth of the world population, together with technological and industrial expansion, had created a need to preserve and seek optimal use of natural resources, among which freshwater resources were of vital importance. It had been foreseen that the competition between different uses and users of limited water resources was likely to increase the possibility of conflicts between States. Despite the existence of hundreds of bilateral or regional agreements regulating the use of international watercourses, it had been felt that those rules and prevailing customary international law were still vague and did not cover all the practical problems which might arise between riparian States, especially the problem of water pollution.

15. The rationale behind that initiative had stood the test of time and in his view the adoption of the draft articles, with such amendments as might be necessary, would still contribute considerably to the development of the international law of the non-navigational uses of international watercourses, despite the delay in finalizing the draft articles in the International Law Commission, owing to the complexity of the subject.

16. In its recent comments on the Commission's draft articles, the Government of Finland had drawn attention to the recommendations contained in Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development, in the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and in the Convention on Environmental Impact Assessment in a Transboundary Context. Those recommendations should be reflected in the draft articles, and both the later developments and the earlier phases of the issue should be mentioned in the preamble to the convention.

17. Turning to cluster I, he welcomed the fact that the protection of international watercourses from the adverse effects of human activities had been addressed in the draft articles. In article 1, paragraph 1, the word "protection" should be inserted before the words "conservation and management" in order to fully reflect the nature of the measures covered by Part IV of the draft articles.

18. Article 3 took into account the possibility that watercourse States might enter into watercourse agreements. However, the relationship between such agreements and the draft articles remained unclear and could, perhaps, be regulated more precisely. As was implied in the commentary, article 3 was not designed to apply to regional agreements whose nature and purpose were similar to those of the draft articles; the relationship between such parallel agreements and the draft articles was thus not clear. Furthermore, existing watercourse agreements might include provisions whose relationship to the draft articles would likewise be unclear. The wording of the article should therefore be clarified in that respect. It had been suggested that a clause expressly safeguarding existing watercourse agreements should be inserted. For environmental reasons, however, it would be tempting to say that the future

convention would overrule existing agreements when they included provisions which might adversely affect the environment.

19. Portugal's written proposals concerning article 3 (A/51/275) were interesting, for they were aimed at enhancing the protection of watercourses and their ecosystems and prohibiting regression in the substantive regulation of a particular situation.

20. In their written comments, some States had expressed the view that article 4, paragraph 2, was detrimental to the freedom of States and should be deleted. In its comments concerning article 21, however, Finland had pointed out that the threshold between unlawful injury and tolerable injury was determined by using the term "significant harm". The same threshold of "significance" also appeared in articles 3, 4, and 7. Finland was concerned that express mention of "significance" could be interpreted as legitimizing the causing of harm up to the limit of significant harm, an adverse consequence which would hardly be politically desirable. The articles should therefore refer merely to "harm" instead of "significant harm".

21. Attention should also be drawn to the different selection of words in articles 3 and 4. In its commentary to article 4, the Commission had stated that the meaning of the term "significant" was explained in the commentary to article 3. In the latter article, however, the term "significant extent" was qualified by the words "adversely affect", which were missing from article 4. According to the current wording of article 4, a State suffering from harm which was not significant would not be entitled to participate in the consultations on, and in the negotiation of, an agreement, or to become a party thereto. On the other hand, a State whose use of an international watercourse might be positively affected to a significant extent would be entitled to participate. His delegation was therefore not completely convinced that the article was appropriately drafted.

22. Mr. ISKIT (Turkey) said that the regulation of international watercourses had acquired vital importance in relations between States, particularly in regions where water resources were scarce.

23. Turkey had a very special geographical situation with regard to international watercourses. It was the upstream riparian State in the case of two major international transboundary rivers, the Euphrates and the Tigris, and was also the downstream riparian State in the case of two other rivers. Also, two rivers constituted the whole or part of its borders with two of its neighbours. That was why Turkey attached the utmost importance to the Commission's work on the convention under consideration. Its approach was based on the belief that, since water was a finite commodity, the utilization of international watercourses should be tied to common understandings and principles.

24. His country's general position on the draft articles was that their main purpose should be to achieve an equitable and reasonable arrangement regulating water utilization between watercourse States. Other considerations, such as

preventing possible damage, should be subsidiary to that general approach. Also, the concept of sustainable development should be given more prominence. Lastly, the aim should be to elaborate a framework convention enacting the basic principles and setting forth the conceptual basis for eventual bilateral or regional arrangements regarding specific watercourses to be concluded between the watercourse States concerned, taking into account their respective characteristics. Provisions which were too specific and detailed should therefore be avoided.

25. Article 1, which defined the scope of the draft articles, had correctly left out the navigation issue. Nevertheless, the second paragraph touched on that issue by foreseeing that it would be included within the scope of the draft articles if other uses of the water either affected or would be affected by navigation. That approach gave priority to the draft articles in the application of rules related to mixed use involving both navigation and other water uses simultaneously. However, in practice, it would not be appropriate to make a ruling on a specific case involving mixed use on the basis of the draft articles without having a thorough knowledge of the specific characteristics of the watercourses in question. To avoid any such complications, it was preferable either to exclude the navigation issue altogether or to ensure that the problems of mixed use mentioned in paragraph 2 did not fall solely within the scope of the draft articles.

26. Mr. LEGAL (France) recalled that in paragraph 3 of its resolution 49/52 the General Assembly had asked the Sixth Committee to elaborate a framework convention on the law of the non-navigational uses of international watercourses. There was no agreement, however, on the definition of a "framework convention" or on the relationship of such a convention to other conventions already concluded in that area. In his view, a framework convention was not an autonomous instrument, and thus specific conventions must be concluded for its implementation. Articles 1 and 3 must clarify the relationship between the framework convention and existing conventions and must make the former's status as a non-autonomous instrument clear.

27. Article 1 must also convey the idea that a framework convention had no direct effect in law. To that end, he proposed the addition of a third paragraph, which ought to eliminate any possible ambiguity: "The present articles apply only to watercourses on which agreements have been concluded which refer explicitly to it [the framework convention]." Article 3 should also be redrafted to reflect the situation of agreements concluded both prior to and subsequent to its entry into force.

28. Mr. HARRIS (United States of America) said that article 1 of the draft had not intended to establish rules on the conservation and management of living resources such as fish, for example. If that had been the case, it would have included numerous regulatory provisions for such activities. Nevertheless, the conservation and management of living resources did appear to fall within the broad definitional scope of article 1, paragraph 1. To clarify that issue, his Government suggested that the following additional paragraph should be added to article 1: "This Convention does not apply to the conservation and management

of living resources that occur in international watercourses except to the extent provided for in Part IV and except insofar as other uses affect such resources."

29. Mrs. ESCARAMEIA (Portugal) said that her delegation supported the proposal of Finland with regard to article 1. With regard to the comments made by the representative of France on the nature of a framework convention, her delegation did not view such an instrument as being merely for reference or a supplement to bilateral agreements; it carried more weight than an instrument that was observed voluntarily.

30. Mr. NEGA (Ethiopia) commended the International Law Commission for its hard work in developing the draft articles. He hoped that the preliminary comments and observations of delegations would be considered carefully in an effort to balance the views of all States.

31. As to the new proposal regarding the relationship between the future framework convention and existing bilateral or multilateral watercourse agreements, it was his understanding that the draft articles were intended to provide a general framework of rules and principles that would be applicable to future watercourse agreements among concerned watercourse States. The omission from the current draft articles of any reference to existing agreements was not accidental, but the result of a decision taken by the International Law Commission which his delegation fully supported.

32. The continued validity and application of existing watercourse agreements would depend on two factors. First, they would remain valid only if they were not in contradiction with the fundamental principles and objectives set forth in the draft articles, in particular the principle of equitable and reasonable utilization of international watercourses. Second, such agreements would remain valid if the parties to them wished to continue to be bound by them in their future relations. No express exclusion of such agreements from the scope of the draft articles was therefore possible. His delegation objected to the inclusion of any provision that would exclude existing watercourse agreements from the scope of the convention, since that would entail the rejection of the principle of equitable and reasonable utilization.

33. Mr. SABEL (Israel) said that article 1 should establish from the outset that the convention did not affect existing agreements or binding customs. A clause should be included to the effect that issues not covered by the convention would continue to be covered by customary law. It might also be useful to combine article 2, "Use of terms", with article 1.

34. Mr. SMEJKAL (Czech Republic) said that the position of his delegation was that the framework convention represented a supplementary, progressive development of international law rather than a codification exercise. Therefore, it fully supported the proposal of France with regard to article 1.

35. Mr. TOMKA (Slovakia), referring to the proposal by Finland to insert "protection" before "conservation and management" in article 1, wondered whether

the term "conservation" would cover both "protection" and "preservation". In any case, the wording of the title of Part IV should be made consistent with the final wording of that paragraph.

36. It seemed useful to be guided by other framework conventions, such as that concerning climate change, in dealing with the question of limits to implementation. The United States proposal to add a third paragraph to article 1 had merit. Although the restructuring of articles 1 and 2 proposed by Israel was not a major issue to his delegation, it seemed unnecessary, as those articles followed the normal pattern for such conventions.

37. Mr. PRANDLER (Hungary) said that his delegation supported the Finnish proposal regarding article 1. In his view, the terms "protection" and "conservation" did not have the same meaning.

38. His delegation believed that the reference to the navigation issue was appropriate in article 1, paragraph 2. As both an upstream and downstream riparian State, Hungary hoped that a solution could be found that would meet the concerns of both.

39. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the relationship between the framework convention and existing and future conventions, as reflected in article 1, required further clarification. The view expressed by the representative of France that a framework convention had no autonomous effect should be explored further. Her delegation supported the proposal of Finland with regard to article 1, paragraph 1, but would also add the word "utilization" after "preservation".

40. Ms. FLORES (Mexico) said that, in general, the text was well balanced, and her delegation was prepared to work towards its completion at the current session. It supported the proposals of both Finland and Argentina regarding additions to article 1, paragraph 1. Although she agreed with the representative of France, she also agreed with the representative of Portugal that the framework convention should have effect where no prior convention existed.

41. Mr. THAHIM (Pakistan) said that the expression "and of their waters" in article 1, paragraph 1, was superfluous and should be deleted because, by definition, a watercourse consisted of not only a channel, but also the water flowing through it. Article 3 was unclear as to whether the framework convention would apply only to watercourse agreements concluded after it came into force or also to watercourse agreements concluded previously; it was his understanding that agreements concluded previously would remain in force. The framework convention's purpose was not to supplant existing treaties, but to facilitate their implementation. To eliminate any ambiguity on that score, he proposed the insertion of a separate article, entitled "Relation to other international agreements", which would read, "This Convention shall not alter the rights and obligations of States which arise from other bilateral, regional or subregional agreements already in force between them".

42. Ms. GAO Yanping (China) said that the draft articles prepared by the International Law Commission represented a realistic, balanced approach to the need to reconcile the different interests of watercourse States. She agreed that article 1 should clarify that the framework convention was not intended to supplant existing or future bilateral or multilateral watercourse agreements.

43. Mr. NUSSBAUM (Canada) supported the inclusion in article 1 of wording that excepted existing treaties and customary rules from the scope of the draft articles. He proposed that the words "except as may be provided otherwise by convention, agreement or binding custom among the watercourse States" should be inserted at the end of article 1, paragraph 1, to reflect the wording of article I of the 1966 Helsinki Rules. He also supported the proposals put forward by the representatives of Finland and Argentina.

44. Mr. THUITA MWANGI (Kenya) said that the draft articles struck a balance among conflicting interests, and care must be taken to maintain that balance. He agreed with the representative of Ethiopia that no additional paragraph should be inserted to exclude existing agreements or arrangements from the scope of the framework convention, since that would prejudice the convention's basic purpose, which was to set out general principles in order to facilitate negotiations on all international watercourse agreements. The amendment proposed by Pakistan was interesting, but should not be inserted in article 1; the Working Group should wait until it had completed its discussion of the entire convention before deciding on the matter.

45. Mr. WELBERTS (Germany) said that his country's experience had demonstrated the importance of close international cooperation with respect to international watercourses. He agreed that the framework convention should not affect existing bilateral or multilateral agreements, and said that his delegation would carefully consider the proposals of Argentina and Canada. He supported Finland's proposal to insert the word "protection" in article 1, paragraph 1, so as to bring the wording into line with that of part IV of the convention.

46. Mr. de VILLENEUVE (Netherlands) agreed with the representative of Mexico that international rules should be adopted for negotiations on new international watercourse agreements. He preferred to await the outcome of the Working Group's discussions before deciding whether the draft articles should constitute a framework or supplementary convention, and wondered whether the text could be partially binding (in terms of the principles it set forth) and partially supplementary.

47. Ms. KALEM (Uganda) said that existing international watercourse agreements in Africa had been negotiated by the former colonial Powers and that some of them were prejudicial to her country. Consequently, the draft convention should not be amended to specify that it would not affect existing agreements.

48. Mr. MAZILU (Romania) said that he strongly preferred to retain the current wording of article 1, paragraph 1, and fully shared the views of Slovakia and Germany in that regard. He also supported the Turkish proposal concerning paragraph 2 as well as the United States proposal, which should appear as

paragraph 3 of article 1. Moreover, the preamble of the framework convention should refer to the excellent work done by the International Law Commission in preparing the draft articles; he would submit a written proposal to that effect.

49. Ms. SINJELA (Zambia) said she hoped that the framework convention would not affect existing international watercourse agreements, since her country had recently adopted a protocol on shared watercourse systems in the Southern African Development Community, which had been drafted on the basis of the draft articles currently under consideration.

50. Mr. TANZI (Italy) said that he had no objection to including a retroactivity clause in article 3 so as to reassure States that had concluded satisfactory bilateral and multilateral agreements that those agreements would remain valid. To address the concerns expressed by some delegations, he proposed the insertion of wording to the effect that, in cases where previously concluded watercourse agreements conflicted with the framework convention, the States parties to such agreements should endeavour to bring them into conformity with the framework convention. It was important that the framework convention should have some normative effect with regard to future negotiations, so that States parties could not conclude agreements that ran counter to the general principles set forth in it.

51. Ms. MEKHEMAR (Egypt) said that the Working Group must determine whether it was considering a convention or international rules of conduct. In any case, she agreed with the representative of France that it was important to specify that the framework convention would not affect existing and future watercourse agreements or the acquired rights of States.

52. Mr. BENÍTEZ SÁENZ (Uruguay) said it was his understanding that the Working Group was considering a convention for use as a frame of reference for issues relating to international watercourses. He agreed with the representative of Argentina that article 1 should specify that the framework convention did not affect existing watercourse agreements.

53. Mr. AL-HAYEN (Kuwait) said that he supported the proposals of Finland and the United States of America with regard to article 1 and agreed with the representative of Pakistan that there was no need to make a separate reference to the waters of international watercourses. He would also prefer to switch the order of articles 1 and 2.

54. Mr. DOS SANTOS (Mozambique) said that the principles of sustainable development and environmental protection should be thoroughly addressed in the draft articles. He supported the insertion of the word "protection" in article 1, paragraph 1. He agreed with the representative of Zambia that the framework convention should specify that it did not affect existing watercourse agreements, since his country, like Zambia, had adopted the protocol on shared watercourse systems in the Southern African Development Community.

55. Mr. ROSENSTOCK (Expert Consultant) said that he saw no problem with the insertion of the word "protection" in article 1, paragraph 1, since the

International Law Commission had not intended to make a distinction between the wording of that paragraph and that of Part IV. He agreed that the separate reference to the waters of international watercourses was not essential, but the Commission had wished to emphasize that those waters were included in the scope of the framework convention. The United States proposal would merely make explicit what was already implicit, since the living resources of international watercourses were dealt with only in Part IV. With regard to the proposed deletion of paragraph 2 of article 1, the reasons for the inclusion of that paragraph were noted in paragraph 4 of the commentary on article 1.

56. The framework convention was not intended to override all other agreements on international watercourses; rather, it had no effect at all on those agreements, and neither validated nor invalidated them. However, if delegations wished to include a specific reference to the relationship between the framework convention and existing and future agreements, they could do so more easily in the context of article 3. More problematic was the French delegation's view that the convention's validity would derive from its reflection in other agreements. The intention had been to elaborate not model rules, but a framework convention, as decided in General Assembly resolution 49/52. That resolution also addressed the issue of bilateral and multilateral agreements, indicating that they should not be affected by the adoption of a new international instrument unless the parties to those agreements had otherwise decided.

57. Mr. MORSHED (Bangladesh) said that his delegation supported the proposed Finnish amendment to article 1, paragraph 1, and also supported the views expressed by the representative of Italy. To void the framework convention of all normative substance would be retrogressive and contrary to the mandate given to the International Law Commission to codify and develop international law on the subject.

58. Mr. LEGAL (France), replying to the comments made by the Expert Consultant, said he had never proposed that the framework convention should be converted into a draft model law. He had simply suggested that its scope should be clarified, and that one way of doing so would be for the scope to be determined by special implementing agreements, an option which his delegation would prefer.

59. Generally speaking, while his delegation appreciated the constructive nature of the Expert Consultant's remarks, it would prefer for any statements presenting the draft articles to be made prior to the discussion, and for the Expert Consultant to refrain from commenting on the political positions adopted by sovereign States.

60. He expressed support for the Israeli proposal that the Working Group should reach agreement in principle on the scope of the draft articles and invited the Chairman of the Working Group to express his views on the subject.

61. Mr. YAMADA (Chairman of the Working Group of the Whole) said that he would express an opinion on the question referred to by the French representative at a later time. As article 1 was closely related to draft article 3, he would

prefer for the Working Group to discuss article 3 before taking a separate decision on article 1.

62. Mr. RAO (India) said that by its very nature, a framework convention set a higher standard, in terms of normative rules, than what his delegation would have preferred. In view of the different characteristics of river systems and the histories of their particular uses, model rules would have been more appropriate. Nevertheless, as the Expert Consultant had pointed out, article 1 and other articles indicated that the framework convention simply offered guidelines, giving the States parties concerned complete flexibility, and that existing or future agreements would in no way be affected by its adoption.

63. Mr. MAZILU (Romania) said that his delegation appreciated the comments made by the Expert Consultant and believed that his comments would be most helpful to the Working Group if they were made at the end of the debate.

64. Mr. CALERO RODRIGUES (Brazil) said that his delegation was satisfied with the draft articles as presented and did not intend to propose any changes to them. The Finnish proposal, which brought the wording of article 1 into conformity with Part IV of the draft, appeared to elicit general agreement; his delegation also supported it. As the draft convention was silent on the subject of existing agreements, his delegation believed that, in accordance with a general principle of law, they would not be affected by it; however, his delegation had no objection to including in the draft an express stipulation to that effect.

65. The French proposal, however, was unacceptable to his delegation, as it meant that the framework convention would have no effect unless it was supplemented by a watercourse agreement. That was not the intention behind a framework agreement, and it was not the basis on which the Commission had worked. The text that was adopted would be valid and applicable between States parties. It could be modified in relation to a particular watercourse by a specific additional agreement, but if States did not feel the need to adjust its provisions, then it would apply irrespective of any pre-existing watercourse agreements.

66. Mr. HAMDAN (Lebanon) said that the draft was well balanced and was supported by all delegations. As the representative of Italy had suggested, States should be encouraged to endeavour to reconcile pre-existing agreements with the new convention.

67. Mr. ISKIT (Turkey) agreed with the representative of France that the Expert Consultant's comments should be heard at the beginning of the discussion. The Commission had finished its work; the Expert Consultant's views were already on record. The members of the Working Group, as the representatives of sovereign States, must now negotiate a final text of the draft articles. If the Expert Consultant spoke at the end of the discussion, he would appear to be intervening in that process.

68. His delegation would be grateful if the Chairman could explain how the division of labour between the Working Group and the Drafting Committee was to be determined. In the Turkish delegation's view, it fell to the Working Group to decide which proposals were of a substantive nature and which pertained to drafting.

69. Mr. YAMADA (Chairman of the Working Group of the Whole) said that the Expert Consultant's role was not to introduce each draft article, but to draw attention to its legislative history within the International Law Commission. Nevertheless, he would hold consultations on how to proceed.

70. As to the division of labour between the Working Group of the Whole and the Drafting Committee, it was the Working Group's task to determine the substance of the draft articles and the nature of any proposed amendments, while the Drafting Committee's main function was to negotiate a text of the draft articles in accordance with guidelines to be established by the Working Group.

71. Ms. BOUM (Cameroon) said that, in her experience, the Expert Consultant's role was to intervene at the start of the debate in order to determine whether the Commission should adopt a position on the views being expressed. It was the Chairman's role to summarize the discussion. She urged the Chairman to hold consultations on the matter as soon as possible.

72. Mrs. BRODARD (Observer for Switzerland) said that, as stipulated in paragraph 1 of article 3, States could enter into one or more agreements which applied and adjusted the provisions of the framework convention. That provision was intended to specify, at least in part, the nature of the general framework convention that would emerge from the current negotiations. While the framework convention would apply to the conclusion of future watercourse agreements, States parties wishing to conclude a watercourse agreement would be free to depart from its provisions, if they so wished. Nowhere in the draft articles was it stated that the watercourse agreements thus concluded must be interpreted in the light of articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties.

73. As far as future watercourse agreements were concerned, the draft articles appeared to be satisfactory; such was not the case, however, where existing agreements were concerned. That question was of vital importance to her country, whose international waterways were almost wholly governed by existing agreements with neighbouring States.

74. It might reasonably be argued that, since future watercourse agreements could depart from the framework convention, the same was true for existing agreements. Nevertheless, if the draft articles did not specify that existing agreements remained valid, there was a possibility that dissatisfied parties to such agreements might challenge them on grounds of their alleged incompatibility with the framework convention, and especially with the principle of "equitable and reasonable use" embodied in articles 5 and 6.

75. In order to avoid that eventuality, which would have disastrous consequences for international law, her delegation proposed that article 3 should be amended by including a new paragraph 4, which would read: "The present articles shall in no way affect existing watercourse agreements, whose provisions shall be interpreted in accordance with the general rules of international law concerning the interpretation of treaties".

76. Mr. LEGAL (France) said that the scope of the framework convention should be determined by riparian States at the time they concluded watercourse agreements. That implied, first, that the States concerned had ratified the framework convention and, second, that a reference to the convention was contained in a watercourse agreement indicating to which watercourse it applied. His delegation therefore proposed that paragraph 1 of article 3 should be amended to read "Watercourse States ... which may apply and adjust the provisions of the present articles or of some of them ...".

77. Moreover, article 3, paragraph 3, appeared to be superfluous and should be replaced by a new paragraph reading:

> "The present articles shall, prior to their entry into force, have no effect on existing watercourse agreements, except as otherwise expressly agreed by all the parties thereto".

78. Mr. HARRIS (United States of America) said that article 3 posed the greatest conceptual difficulties of all the draft articles, because it was always difficult to express the relationship between a new comprehensive agreement and existing bilateral and multilateral agreements on a particular subject. The draft articles were silent on the question of the relationship between the new convention and pre-existing watercourse agreements; his delegation shared the view already expressed that such agreements must be preserved. That could be ensured by adding a provision drafted along the following lines: "This convention will not alter the rights and obligations of a watercourse State arising under other agreements in force on the date on which it becomes a party to the convention."

79. Another problem arose in cases where an existing agreement was silent on an issue covered by the convention. If the parties to such an agreement had not intended it to provide comprehensive regulation of a watercourse, it might be argued that the new convention should fill those gaps. On the other hand, silence on a particular issue might reflect the outcome of arduous negotiations. His delegation therefore proposed that the Working Group should consider adding a provision that would enable each State, at the time it became a party to the convention, to state whether it intended for the convention to fill gaps in existing or future agreements. That might eliminate the reluctance of some States to become parties to the new instrument.

The meeting rose at 1 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
13th meeting
held on
Monday, 7 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 13th MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.13
24 December 1996
ENGLISH
ORIGINAL: FRENCH

96-81300 (E)

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of relevant comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/51/275 and Corr.1 and Add.1; A/C.6/51/NUW/L.1)

1. The CHAIRMAN invited the Working Group of the Whole to continue its consideration of the draft articles on the law of the non-navigational uses of international watercourses, and of the comments thereon.

Article 3

2. Mr. de SILVA (Sri Lanka) said that, with regard to the meaning of the term "framework convention" and the legal consequences of its utilization, the International Law Commission appeared to have preferred not to clarify the term and to allow the parties to the future convention the possibility of considering that it did not affect existing agreements. All the proposals formulated in that regard must be studied carefully, and it was perhaps not possible to settle the question immediately.

3. With regard to the role of the Expert Consultant in the work of the Working Group, his delegation considered that it was sometimes useful to know how the Commission had arrived at the text it had adopted, and that the Expert Consultant was well qualified to provide explanations in that regard. One might wonder why, for instance, in article 1, paragraph 1, the Commission had not referred to measures "of protection", as, in his delegation's view, would have been desirable. It was perhaps because the Commission had considered that that notion was implied in the notion of "conservation". In any case, the members of the Working Group must be allowed the chance to request the Expert Consultant's opinion.

4. Mr. LAVALLE (Guatemala) concurred with the comments made by the representative of Sri Lanka concerning the role of the Expert Consultant.

5. Referring to the proposal made by France at the previous meeting regarding the type of instrument envisaged - namely, a framework convention - he said that when a treaty entered into force, the obligations it set forth must be implemented immediately by the parties, the sole exception being when conditions suspensive provided for the suspension of implementation after entry into force for exceptional reasons. It was thus doubtful whether implementation of the framework convention envisaged could be made subject to suspensive provisions

contained in other instruments; the conditions suspensive and the arrangements for their application would have to be expressly defined therein.

6. Furthermore, while it was true that the provisions of a framework convention were of a general character and very broad in their scope, the same was true of most treaties; which did not, however, permit the invoking of conditions suspensive not expressly defined in the instruments in question. In the present case, the riparian States of an international watercourse could decide among themselves not to apply part or all of the convention, and such a possibility was expressly provided for in the Vienna Convention on the Law of Treaties. It also bore noting that the provisions of some multilateral treaties applied only to relations between certain parties to those treaties: thus, the Vienna Convention on Consular Relations applied only to States that had reciprocal consular relations. Lastly, the riparian States of an international watercourse constituted a community with its own specific characteristics, and the communities constituted by the riparian States of the various international watercourses were often very different from one another and could thus not be governed by the same provisions. For that reason, the riparian States of an international watercourse must be able to conclude the requisite arrangements in the light of the characteristics and uses of that watercourse.

7. Mr. NGUYEN DUY CHIEN (Viet Nam) said that the importance of existing agreements vis-à-vis the future convention should not be overestimated, since the latter dealt with different issues, namely, the non-navigational uses of watercourses. In his view, article 3 correctly defined the relationship between the proposed framework convention and future agreements on watercourses, and there was no need to delete or amend paragraph 3. On the other hand, a provision concerning the relationship between the convention and existing agreements needed to be added to the draft articles; that provision should figure at the end of the convention, before the provisions relating to signature and entry into force, and not, as some delegations had proposed, in article 1, which dealt with the entirely different question of which uses of international watercourses fell within the scope of the framework convention.

8. Mr. RODRÍGUEZ CEDEÑO (Venezuela) said that he considered the text of article 1, as amended by Finland and Argentina with regard to its first subparagraph, to be acceptable. He also favoured the amended wording of article 3 proposed by Portugal in its written observations. The future instrument should certainly be a framework convention, but that was no reason not to give it some substance: it must set forth principles of which States would have to take account when negotiating future watercourse agreements while still having the possibility of adapting them to the characteristics and uses of the particular watercourse, as provided in article 3.

9. Mr. CHAR (India) said that the text of article 3 was sufficiently clear with regard to the nature and scope of the framework convention. The convention would not limit the freedom of the parties to continue to apply existing agreements or to amend them to take account of their joint needs. Nevertheless, in the light of the debate, his delegation endorsed the proposals made by France and Switzerland and intended to support them.

10. Mr. LOIBL (Austria) concurred with those delegations that had proposed adding a saving clause concerning existing agreements, and considered that the proposals submitted by Switzerland and the United States in that regard merited more detailed consideration. Furthermore, article 3 should perhaps also cover the case of regional agreements not confined to a specific watercourse.

11. Mr. ESCARAMEIA (Portugal) said that in the comments and observations it had submitted (A/51/275), Portugal proposed two amendments to article 3. First, at the end of paragraph 2, the following sentence would be added: "Such agreement shall, when the need arises, take into consideration an environmental impact assessment." That addition seemed necessary not only because the objective of the negotiations must include environmental considerations, but also because environmental impact studies constituted an important aspect of what might be called the procedural rules of international environment law. However, the words "when the need arises" introduced some flexibility, and should make the amendment acceptable. Similarly, Portugal proposed adding the following phrase to the end of article 3, paragraph 3: "in accordance with the principles of international environment law aiming at an enhanced protection of the watercourse and its ecosystems".

12. With regard to the status of the framework convention, Portugal, like Italy, considered that it could not be applied retroactively so as to affect existing agreements. Given that those agreements might sometimes lend themselves to differing interpretations, it would perhaps be necessary to include in the framework convention a provision similar to the one concerning existing agreements contained in article 9 of the Convention on the protection and use of transboundary watercourses and international lakes, for instance, by providing that States parties to those agreements must endeavour to adapt them so as to eliminate therefrom any provision contrary to the fundamental principles of the framework convention. As for future agreements, the framework convention was bound to have some influence on their elaboration.

13. Mr. VORSTER (South Africa), recalling that the delegations of Zambia and Mozambique had referred to the measures taken by the member States of the Southern African Development Community (SADC) to cooperate in regulating the use of the watercourses of southern Africa, said that South Africa had signed the protocol on joint uses, which contained certain provisions also found in the Commission's draft articles on international watercourses.

14. With regard to article 3, it should be stated clearly in that article that existing agreements would not be affected by the future convention. The freedom of the riparian States of an international watercourse to regulate the uses of that watercourse having regard to its characteristics must not be unduly hampered, but the wording of article 3, paragraph 1, seemed to mean that when they concluded agreements for that purpose, States could only apply and adjust the provisions of the future framework convention. Yet the Commission had indicated in paragraph (4) of its commentary that the verbs "apply and adjust" meant that, while the agreements relating to the various international watercourses must take due account of the provisions of the draft articles, the latter were essentially residual in character. The text of paragraph 1 should therefore be amended so as to make that quite clear.

15. South Africa also believed that the proviso to be found at the end of article 3, paragraph 2, was too broad. Its wording did not take account of the fact that the State whose interests were likely to be affected might, for various reasons, consent thereto. That proviso should accordingly be limited to the harmful effects to which the affected State had not consented. Lastly, the same paragraph envisaged the conclusion of agreements with respect to "a particular project, programme or use". That wording was too restrictive and South Africa proposed that it should be replaced with the words "a particular programme or project with regard to its use, management, protection or preservation".

16. Mr. ISKIT (Turkey) said that the parties to existing agreements must be free to choose whether or not to accept the principles set forth in the draft articles. If they decided to amend or adjust them in order to take account of those principles, all the riparian States of the watercourse must agree to do so. As for future agreements, there again the parties must be free to conclude both agreements that took account of the framework convention's provisions and agreements that diverged therefrom, even to a substantial extent. The framework convention should not be applicable automatically, but only when agreements concluded by all the riparian States of a particular watercourse gave effect to its provisions. Turkey's position in that regard was thus close to that of France and Switzerland. Lastly, in view of the general character of article 3, Turkey considered that the amendments proposed by Portugal should be considered in the context of part IV, which dealt expressly with environmental questions.

17. Mr. GABEL (Israel) said that the convention did not affect existing agreements. As for future agreements, States had full freedom in that regard, provided those agreements did not adversely affect other States. Only when another State was affected by those agreements would the provisions of the framework convention be applied.

18. Mr. ŠMEJKAL (Czech Republic) said that existing agreements must not be affected by the future convention, and that the proposals submitted by Switzerland and France in that regard were a step in the right direction, and also had the virtue of covering the interpretation of those agreements. Difficulties remained, however, particularly with regard to the question, raised by the United States delegation, of the points on which the existing agreements were silent, and the extent to which future agreements could diverge from the principles set forth in the convention.

19. A proposal that might resolve those difficulties had been submitted at the previous meeting. That proposal was to state in article 3 that the framework convention, by virtue of its nature and general scope, could not be automatically applicable and that implementing agreements were necessary to give effect to those provisions. It would be premature to dismiss that proposal on the grounds that it would be tantamount to transforming the framework convention into a series of model rules and that it would run counter to the mandate given by the General Assembly. On the contrary, it had two advantages. First, it took account of the fact that the provisions of the future convention were so general in scope and nature that it was difficult to envisage them being applied directly. Secondly, the conclusion of special agreements would enhance international cooperation in the area under consideration. In the absence of

such agreements, the application of the general principles set forth in the framework convention to particular situations might give rise to disputes that would be difficult to resolve. For that reason, his delegation hoped that further consideration would be given to that proposal.

20. Mr. PRANDLER (Hungary) said that his delegation supported the proposal submitted by Finland in its written observations; further thought should be given to the question whether article 3 should encourage, or indeed oblige, States parties to conclude more specific agreements on certain aspects of the uses of international watercourses. He also concurred with the very specific Portuguese proposals concerning paragraphs 2 and 3 of article 3: the agreement or agreements must indeed be concluded in accordance with the principles of international environment law. As for the Venezuelan proposal, it was justified in the light of the fact that, since circumstances could change considerably, it might be necessary to adjust the existing treaties or to conclude new treaties.

21. Mr. ELMUFTI (Sudan) said that, with regard to the relationship between the draft articles and existing agreements, his delegation supported the proposal that a provision should be added to article 3 stipulating that in the event of a conflict between existing agreements and the proposed regime, efforts should be made to bring those agreements into line with the new regime. To lend further weight to the arguments put forward by other delegations in support of that proposal, his delegation noted that article 4, paragraph 1, which entitled every watercourse State to participate in the negotiation of any agreement that applied to the entire watercourse, and article 10, paragraph 1, which provided that no use of a watercourse enjoyed inherent priority over other uses, confirmed the need to include the proposed provision in article 3.

22. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the framework convention must not in any way affect existing agreements, and that a paragraph to that effect should be added to article 3. Consideration should also be given to the proposal made that morning by the United States delegation, to the effect that the framework convention might fill the gaps in those agreements. Account should also be taken of their intentional silences on certain matters.

23. With regard to article 3, paragraph 2, her delegation wished to propose a drafting amendment to the Spanish version of the phrase "provided that the agreement does not adversely affect, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse." The term "menoscabe" was not appropriate. It would be better to bring the text into line with the wording of article 7.

24. Mr. MAZILU (Romania) supported the Venezuelan proposal concerning article 3. He proposed that a fourth paragraph should be added, reading: "This Convention shall not alter the rights and obligations of the watercourse States arising under other agreements in force on the date on which they become Parties to the Framework Convention." On the question of the relationship between the framework convention and future agreements, he concurred with the statements made by the representatives of the United States and Argentina.

25. Mr. NEGA (Ethiopia) said he was opposed to including in the framework convention a provision expressly excluding existing agreements from its scope,

because agreements existed that ran counter to the principles embodied in the convention, in particular that of equitable and reasonable utilization. The principles in the convention, which reflected the progressive development of the law in that area, would be rendered meaningless by a provision entirely excluding existing agreements from its scope. He had listened carefully to the objections raised by some Member States, including France, but believed that their concerns were implicitly taken into account in articles 1 and 3. Therefore, a provision addressing the relationship between the future convention and existing agreements was unnecessary. In any case, his delegation felt that the question should be examined at the end of the Working Group's meetings on the basis of the proposals submitted at the preceding meeting, especially the proposal of Italy.

26. Mr. de VILLENEUVE (Netherlands) said he agreed with the representative of Ethiopia and felt that the consideration of those sensitive questions should be postponed until the end of the Working Group's meetings. The proposal of Italy concerning existing agreements deserved careful consideration. As far as future agreements were concerned, the text of article 3 was rather vague. When one or more watercourse States wished to conclude an agreement, the other watercourse States must be required to accede to it if requested to do so. Paragraph 1 should therefore be amended to read: 'Watercourse States shall, at the request of one or more watercourse States, enter into one or more agreements'. Of course, the agreement or agreements must have been negotiated in good faith. In addition, the word "adjust" caused problems, but it would be preferable to return to that matter once the consideration of general questions had been concluded.

27. Mr. AL-ADHAMI (Iraq) said that many States attached great importance to the draft convention and hoped that it would lead to practical solutions for the problems posed by the utilization of international watercourses. Although it was a framework convention, it was important that it should define precise criteria. His delegation approved of the text of article 3 as a whole, but would prefer more specific wording for paragraph 2.

28. Ms. GAO Yanping (China) said that article 3 concerned not only the scope of the convention, but also the rights of watercourse States. She supported the emerging consensus on the direct links between articles 1 and 3. Article 3 was reasonable and well balanced, and she agreed with the Commission's commentary to that article, which stated that, in the absence of agreements between watercourse States, the convention would serve as a basis for future agreements. The framework convention could not, however, modify the tenor of existing agreements, for two reasons. First, existing agreements fell within the scope of the competence and the sovereign rights of watercourse States. Second, the framework convention could not resolve all the questions concerning the non-navigational uses of watercourses. States should therefore be free to conclude the agreements which suited them. As for the Portuguese proposal to add to paragraphs 2 and 3 a clause concerning environmental protection, the proposed text did not belong in article 3, which dealt with future agreements and on the relationship between them and the framework convention.

29. Mrs. DASKALOPOULOU-LIVADA (Greece) said that, on the whole, the current wording of article 3 was satisfactory because it preserved the ability of States

to conclude new agreements in that area, while specifying that they were also under an obligation not to adversely affect the use of watercourses by other riparian States. However, there was certainly room for improvement in both substance and form. Thus, it should be indicated more clearly that the parties could decide by mutual agreement to adapt existing agreements to remove possible contradictions with the framework convention. As the representative of Portugal had suggested, the corresponding provision of the Convention on the Use and Protection of International Watercourses and Lakes could serve as a model in that regard.

30. Mrs. FLORES (Mexico) said that draft article 3 was satisfactory, in particular because it provided for the possibility of adapting the provisions of the framework convention to the characteristics and uses of a particular international watercourse. The relationship between the framework convention and existing agreements must, however, be made more specific. In that regard, Mexico welcomed the proposals of Romania and the United States with regard to article 1. As for future agreements, the parties should be guided by the principles embodied in the convention and should not be entitled to depart significantly from its provisions.

31. Mr. TOMKA (Slovakia) said that the relationship between the framework convention and existing agreements should be governed by the principle that lex specialis took precedence over lex generalis. For that reason, Slovakia supported the proposal, submitted by Switzerland in its written observations (A/51/275), that a clause expressly safeguarding existing watercourse agreements should be inserted in the draft convention. At any rate, even if States concluded agreements that contradicted certain obligations they had undertaken elsewhere, those agreements remained valid, insofar as they did not contravene any mandatory rule of international law.

32. Moreover, without underestimating the importance of the evolution of international environmental law, Slovakia did not believe that an environmental impact assessment would always be justified in the case of bilateral or multilateral agreements concerning the utilization of an international watercourse; everything would depend on the activities covered by that agreement. Moreover, who would decide when such an assessment was necessary? For that reason, his delegation did not support the Portuguese proposal.

33. Mr. NUSSBAUM (Canada) agreed that the text should be amended in order to clarify the relationship between the future framework convention and existing and future agreements. He proposed that the Drafting Committee should settle the question, on the basis of the proposals contained in document A/51/275, and decide whether the clarifications should be included in article 1 or article 3.

34. The CHAIRMAN suggested that the Working Group should proceed to its consideration of draft article 4.

35. Mr. LALLIOT (France), supported by Mr. BRODARD (Observer for Switzerland), Mr. ISKIT (Turkey) and Mr. ROGACHEV (Russian Federation), emphasized that the question of the relationship between the framework convention and existing or future agreements must be settled before the Working Group proceeded to consider subsequent articles. Agreement must be reached on the general principle of the

legal scope and non-retroactivity of the convention. Since that was a substantive issue which would determine the future course of the Working Group's work, it should not be referred to the Drafting Committee.

36. The CHAIRMAN said that, because so many questions had been raised, it would be impossible to draw conclusions immediately. Delegations must first submit specific proposals and consult among themselves to coordinate their positions. He again suggested that, in order to save time, the Working Group should begin its consideration of article 4.

37. Mr. CALERO RODRIGUES (Brazil), supported by Mr. HARRIS (United States of America), said that the Chairman's proposal was acceptable. He proposed that the problems raised by draft articles 1 and 3 should be resolved at the meeting to be held on the following day.

38. Mr. BRODARD (Observer for Switzerland) said that article 4, paragraph 1, by which each watercourse State was entitled to participate in the negotiation of and to become a party to any watercourse agreement that applied to the entire watercourse, even if it had not taken part in its formulation, was acceptable to his delegation.

39. Paragraph 2 of the article was somewhat different. Under that provision a third State forming part of a watercourse could claim entitlement to participate in the negotiation of an agreement and to become party thereto, even if the instrument did not relate to its part of the watercourse, provided only that its use of a watercourse "may be affected to a significant extent" by implementation of the agreement. While such a solution was conceivable from the standpoint of the law of treaties, it might deprive watercourse States of their contractual freedom, except where they acted in the framework of the members of the watercourse community as a whole. Thus, any initiative taken by any riparian State, indeed by all such States other than one, might be blocked ad infinitum by a single country, and, in the absence of any compulsory dispute settlement machinery, on the basis of its subjective appreciation of the risk inherent in the scheme.

40. Switzerland would therefore have great difficulty in accepting that solution, which not only involved excessive restrictions on the contractual freedom of States, but also created inequalities between them. Accordingly, his delegation was of the view that the matter covered in article 4, paragraph 2, should be dealt with in the context of part III (Planned measures) of the draft articles: what was valid for measures planned by one watercourse State must be equally valid for initiatives taken by several States.

41. Mr. de SILVA (Sri Lanka) said that the Swiss delegation had raised an interesting point; it would be useful to have that proposal in writing. On a related issue, he wondered whether, should the entitlement conferred on third States by article 4 not be exercised, it could be exercised subsequently or whether it would lapse; a State should not be able to prevent other watercourse States from concluding the agreement in question or from implementing it.

42. Mr. PRANDLER (Hungary) recalled that the Swiss Government had set forth its position in its written observations, contained in document A/51/275. He read

out the last three sentences of those observations, and indicated that Hungary could not support that line of argument. It amounted to exclusion from consultations and perhaps from negotiations of a watercourse State whose use might be affected. The current wording of article 4, paragraph 2, with the formulations "to a significant extent" and "to the extent that its use is thereby affected" was balanced, in that it protected both States wishing to implement projects and programmes as well as third States. Hungary could thus not accept the Swiss proposal to delete article 4, paragraph 2.

43. Mr. ROSENSTOCK (Expert Consultant) said that it seemed to him that by and large inadequate account was being taken of the commentary to article 4 and to other articles. Paragraph 5 of the commentary to article 4 read:

> "The question is not whether States A and B are legally entitled to enter into such an agreement. It is whether a set of draft articles that are to provide general principles for the guidance of States in concluding agreements on the use of fresh water should ensure that State C has the opportunity to join in consultations and negotiations, as a prospective party, with regard to proposed action by States A and B that would substantially reduce the amount of water that flowed through State C's territory."

44. Account must also be taken of articles 11, 12 et seq.: where measures were envisaged which might have a significant impact on the use of a watercourse by other States, specific obligations concerning notification and consultation were provided for. No element in article 4, paragraph 2, gave a right of veto to third States. Rather, articles 11, 12 et seq. set forth very extensive notification and consultation obligations. It would be interesting to hear from those delegations which deemed those obligations insufficient to meet the needs which were supposed to be met by article 4, paragraph 2, and to know exactly what the lacunae were.

45. Mrs. FERNÁNDEZ DE GURMENDI (Argentina) said that it was not necessary to delete article 4, paragraph 2, even if, as currently worded, it appeared to give an excessive entitlement to third States and to lend itself to extreme interpretations by such States. It was essentially a drafting issue.

46. Mr. NGUYEN DUY CHIEN (Viet Nam) supported the comments by the Hungarian delegation. Given the nature and object of the Convention, it was important for the interests of all riparian States of an international watercourse to be protected, since most of the time activities in one part of the watercourse would affect other parts. The wording retained by the International Law Commission was satisfactory and did not in any way give too much power to third States.

47. Mr. TOMKA (Slovakia) said that the Commission had perhaps gone too far, in that article 4, paragraph 2, created the impression that the third State had an entitlement to participate actively in the negotiation of the agreement in question. Perhaps the words "and in the negotiation of", in the penultimate line of the paragraph, could be deleted, with the third State retaining an entitlement to participate in the consultations.

48. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation supported the current wording and endorsed the comments made by Sri Lanka, Hungary and Viet Nam regarding the Swiss position on article 4. If that position were well founded, paragraph 1 should also be deleted. The explanations given by the Expert Consultant in that regard should dispel the fears of the Swiss delegation.

49. Mr. LALLIOT (France) said that France reserved its position on article 4 until agreement had been reached on the principle, and not merely on the form, of article 3 and of article 1, if necessary. The discussion, interesting as it was, which had just taken place on the Swiss initiative demonstrated that interpretation of article 4 and of the following articles was closely linked to the interpretation to be given to article 3, namely the scope to be given to the framework convention.

50. The CHAIRMAN said that he had asked Mr. Calero Rodrigues, who had accepted, to help him in his personal capacity to coordinate consultations among the various delegations which had submitted proposals so as to reach agreement on articles 1 and 3. At the following meeting the Working Group of the Whole should, taking into account the outcome of those consultations, be in a position to express a view on those articles before continuing with consideration of articles 4 et seq.

The meeting rose at 5.30 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
14th meeting
held on
Tuesday, 8 October 1996
at 11 a.m.
New York

SUMMARY RECORD OF THE 14th MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.14
4 December 1996

ORIGINAL: ENGLISH

96-81318 (E)

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 12.10 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/49/355; A/51/275 and Corr.1 and Add.1)

Cluster I (1, 3 and 4) (continued)

1. Mr. CALERO RODRIGUES (Brazil), reporting on the outcome of informal consultations held since the previous meeting, said that while delegations had made progress in resolving their differences, some outstanding issues remained. The most difficult was the relationship between the future framework convention and existing watercourse agreements. The dominant view was that, as a general principle, the convention would not affect the rights and obligations arising out of such agreements; however, since not all delegations accepted that principle, it was felt that some provision should be made to allow States which were parties to existing watercourse agreements to endeavour, if they so wished, to harmonize those agreements with the convention, although there was no obligation to do so. He had formulated a proposal in that regard, and there had been general agreement, not on the terms of his proposal, but on the solution which it indicated.

2. As to the question of future watercourse agreements, the general feeling was that most of the remaining problems could be solved in the Drafting Committee once the Working Group had concluded its consideration of cluster I.

3. Mr. LALLIOT (France) said that the principle of giving States the option of harmonizing the provisions of existing agreements with those of the convention was unacceptable to his delegation, which was why there had been no agreement on the formula proposed by the representative of Brazil. As to the question of future watercourse agreements, his delegation agreed that the draft articles preserved the principle of States parties' freedom to conclude such treaties.

4. Mr. CALERO RODRIGUES (Brazil) said that, while he was aware that some delegations disagreed with his proposal, he believed it represented the only possible basis for compromise.

5. Mr. NEGA (Ethiopia) said that the representative of Brazil had clearly and adequately presented the consensus reached during the informal consultations; however, the basis for compromise was weak and needed to be strengthened. The Working Group should defer consideration of the relationship between the framework convention and existing agreements to a later stage. It might be

possible to incorporate a provision along the lines indicated by the representative of Brazil in the final clause of the convention.

6. The CHAIRMAN said that, while he had taken note of the French position, the general trend reported by the representative of Brazil contained sufficient guidelines to enable the Drafting Committee to resolve the issues relating to article 3.

7. Mr. TODA (Slovakia) said that the draft articles represented an exercise in the codification and progressive development of international law culminating in a framework convention, not an effort to harmonize national legislation. In paragraph 2 of its commentary on article 3, the International Law Commission had clearly spelt out the nature of a framework agreement, namely, "to provide for the States parties the general principles and rules governing the non-navigational uses of international watercourses, in the absence of specific agreement among the States concerned, and provide guidelines for the negotiation of future agreements". He requested the Expert Consultant to clarify whether the Commission's aim had been to lay the groundwork for harmonizing future bilateral agreements.

8. Mr. ROSENSTOCK (Expert Consultant) concurred that the text presented by the Commission was as described by the representative of Slovakia. Some delegations wished to extend the scope of the convention beyond what the Commission had envisioned; in summarizing the results of the informal consultations, the representative of Brazil had endeavoured to respond to their point of view, rather than simply reflecting the content of article 3 as currently drafted. Delegations would need to consider whether or not they favoured that development. The issues involved were both substantive and of a drafting nature, and could be examined in greater detail by the Drafting Committee.

9. Mr. PRANDLER (Hungary) said that his delegation endorsed the conclusions outlined by the representative of Brazil and agreed that the best way to proceed would be to identify general trends in the discussion of specific articles. While his delegation was in favour of adhering to the timetable adopted at the previous meeting, experience showed that it would be unrealistic to endeavour to reach agreement on certain articles before considering others. For that reason, his delegation suggested that the Working Group should seek to identify the areas of disagreement concerning particular articles and should revert to those issues at a later stage.

10. Mr. ISKIT (Turkey) asked whether the Working Group would resume consideration of article 1 and article 3, paragraphs 2 and 3, at a later stage, as there continued to be unresolved issues concerning those provisions.

11. The CHAIRMAN said that he now intended to take up article 4. However, as the representative of Turkey had pointed out, delegations had raised issues other than the ones taken up in informal consultations. The Working Group would have to consider those issues in order to give guidelines to the informal group.

12. Mr. NEGA (Ethiopia) noted that many proposals had been made concerning existing watercourse agreements. His understanding was that the Working Group would return to the question later before submitting the articles in question to the Drafting Committee.

13. Mr. VORSTER (South Africa) said that the interests of third States should be safeguarded in cases when each user of an international watercourse might be significantly affected. However, as the observer for Switzerland had pointed out at the preceding meeting, entitling such States not only to participate in the consultations and negotiations but also to become parties to a partial agreement might lead to undue restriction of the freedom of the other watercourse States. If it was unacceptable to delete article 4, paragraph 2, the paragraph should be amended to indicate that the right of such third States to become parties to an agreement between two or more of the watercourse States should be restricted to aspects of the agreement relevant to the nature, extent and effect of their use. In the case of agreements not dealing with an entire watercourse, a State whose interests were significantly affected was only entitled to participate in consultations and negotiations to the extent that its use was affected, but the right of such a State to become a party to the agreement was not similarly qualified - because of the technical problem of how a State could become a party to part of an agreement. The International Law Commission had suggested ways in which such partial participation might be effected, and there seemed to be no good reason why the right to become a party to an agreement should not be similarly qualified. His delegation suggested that paragraph 2 should be amended accordingly.

14. Mr. VAN DE VELDE (Belgium) said that his delegation was against the deletion of article 4. Paragraph 2 should be amended to bring it into line with article 3, paragraph 2, and to make it clearer. He proposed that the words "to a significant extent" should be relocated to the last line of the paragraph, after the word "affected".

15. Mr. ROSENSTOCK (Expert Consultant) said that the concern raised by the representative of South Africa was discussed in the commentary to article 4. The concern was a valid one and could be looked at by the Drafting Committee with a view to ensuring that article 4 reflected the Commission's intent as expressed in the commentary.

16. Mrs. BRODARD (Switzerland) said that the commentary was clear and presented no difficulty for her delegation. However, as the Expert Consultant had just pointed out, the text of the paragraph itself was not quite clear. It might be acceptable for the text to be amended along the lines proposed by the representatives of Argentina and South Africa, but it must be remembered that paragraph 1 dealt with all the watercourse States and paragraph 2 with a different group of States. It would not be appropriate to imply that third States were entitled to participate in the negotiations. If paragraph 2 was retained, it must make it clear that third States were entitled to participate in consultations but not in actual negotiations.

17. Mr. PRANDLER (Hungary) said that his delegation could accept the Belgian proposal although it did not seem to make much difference. Article 4, paragraph 2, must be retained but could be amended along the lines suggested by the Expert Consultant.

18. Mr. ROSENSTOCK (Expert Consultant) pointed out that he had not suggested any specific language but merely that the paragraph could be amended to make the Commission's intention clear.

19. Mr. LOIBL (Austria) said that article 4, paragraph 2, should be amended in the Drafting Committee to take account of the concerns of the observer for Switzerland, which his delegation shared to some extent.

20. Mr. LALLIOT (France) recalled that his delegation had reserved its position on article 4 and the subsequent articles.

The meeting rose at 12.55 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
15th meeting
held on
Tuesday, 8 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 15th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.15
24 December 1996
ENGLISH
ORIGINAL: FRENCH

96-81324 (E)

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of relevant comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/51/275 and Corr.1 and Add.1; A/C.6/51/NUW/L.1)

1. Mr. DE VILLENEUVE (Netherlands) said that article 5 should also refer to the principle of sustainable development and the principle of precaution. Further, the scope should be extended to protect ecosystems dependent on the watercourse. His delegation proposed the amendment of the wording of article 5 by the insertion of the following words at the end of paragraph 1: "and of related ecosystems taking into account the principle of sustainable development and the principle of precaution".

2. Mr. CRUZ DE ALMEIDA (Portugal) said that it was important to codify the newest and most recent developments in international law in the area of sustainable development. In any event the concept of equitable and reasonable utilization and participation in itself supposed respect for the principle of sustainable development. The link between articles 5 and 7 was thus dubious, since it was far from certain that "responsibility" carried out to "significant harm", and the link between those two issues did not allow a balance to be found between the rights and concerns of upstream and downstream watercourse States. Further, the wording of article 7 created the impression that utilization which caused significant harm might nonetheless be considered, in certain cases, as equitable and reasonable, a line of reasoning that was unacceptable to his delegation.

3. Mr. de SILVA (Sri Lanka) said that he fully supported the provisions of articles 5 and 7. No attempt should be made to refer in those articles to more general provisions such as the principle of precaution.

4. Mr. MANNER (Finland) said that the objective of sustainable development and the principle of precaution, which were not mentioned in the second part of the draft articles (General principles), other than in article 24, should be included in the general principles governing equitable and reasonable utilization and participation. His delegation thus supported the Netherlands proposal.

5. Mr. WELBERTS (Germany), recalling that article 5 was the keystone of the draft articles, agreed that the principle of sustainable development should be set forth in that article. It was his view that the adjectives "optimal" and "adequate" were disproportionate, and that a more balanced formulation should be found. Further, he supported the Portuguese proposal to replace the words "consistent with adequate protection" by the formulation "conditioned by the protection of the watercourse in respect to the principle of sustainable

development". Lastly, he supported the Netherlands proposal concerning related ecosystems.

6. Mr. PRANDLER (Hungary) said that article 5 should be brought more into line with article 7. The principle set forth in article 5 was very important and should be strengthened. His delegation fully supported the proposals by the Netherlands, Portugal, Finland and Germany. He was also of the view that the principle of sustainable development should be better integrated into the draft articles.

7. Mr. ŠMEJKAL (Czech Republic) agreed that article 5 was the keystone of the future framework convention, and said that it established strict balance between the concept of utilization to attain optimal benefits and the need for adequate protection of the watercourse; it should not be amended.

8. Mr. ISKIT (Turkey) said that the first paragraph of article 5 reconciled the principles of equitable and reasonable utilization and the requirement for protection and utilization for the purposes of sustainable development. Nevertheless, the paragraph as a whole could not obey a single principle. In fact the provision comprised two aspects: firstly, that of optimal, rational use; and, secondly, that of adequate protection. Neither of those elements should be subordinated to the other, since such an approach might undermine the balance of the formulation. Accordingly the wording of the first paragraph should not be amended.

9. The second sentence of article 5, paragraph 2, placed responsibility on watercourse States for cooperating in its protection and development, specifying that the modalities of such cooperation would be stipulated in other articles of the convention. However, for his delegation it would be preferable for those modalities to be determined by specific agreements or arrangements between watercourse States. As a result, the words "as provided in the present articles", at the end of paragraph 2, should be replaced by the following: "The nature and details of such cooperation shall be laid down in watercourse agreements between the concerned States".

10. Mr. PULVENIS (Venezuela) said that while his delegation was satisfied with the wording of article 5, it wished, in common with the Czech delegation, the convention to cover also the principles that had emerged under international environmental law. He supported the proposal submitted by Portugal and the Netherlands, in that the proposal, far from undermining the balance of article 5, contributed to its harmonization and coherence, unlike the proposal submitted by Turkey, which, in his view, would unduly limit the framework of the cooperation provided for in paragraph 2. Accordingly, the wording of article 5, paragraph 2, should be maintained as determined by the Commission. The draft articles should also take account of related ecosystems.

11. Mr. VARSO (Slovakia) supported the retention of the wording of article 5, the key to the framework convention, as adopted by the Commission. The provision had the merit of reconciling two essential demands: on the one hand, the possibility for States to utilize watercourses in their respective territories, and, on the other hand, the duty to cooperate in their protection so as to respect the rights of other States.

12. Mr. CHAR (India) said that the principle of precaution and the issue of related ecosystems were already covered in the fourth part of the draft articles, and that there was no need to refer to them in article 5. He supported the amendments to article 5, paragraph 2, proposed by Turkey.

13. Further, his delegation proposed the addition, at the end of article 6, paragraph 1 (a), of the words "in the territory of each watercourse State", and the insertion of article 5 of the Helsinki Rules in article 6, paragraph 2, of the draft articles.

14. Mr. ROSENSTOCK (Expert Consultant) said that in considering the draft convention article by article it was important to keep in mind that its provisions constituted a whole viewed from different perspectives. Article 5, which attempted to provide a very general summary of the provisions, should be approached from that standpoint.

15. Mr. TANZI (Italy) said that the proposals made by Portugal, the Netherlands and Finland on article 5 would improve the already sound framework proposed by the Commission. Paragraph 2, on the other hand, should remain unchanged.

16. Mr. NEGA (Ethiopia) said that the principle set forth in article 5 already had the status of a customary rule of international law. It was in the light of that principle that the provisions of article 7 and the draft articles as a whole should be viewed. Further, his delegation supported the proposals made by Turkey and India on paragraph 2. The second part of the second sentence of paragraph 2 of article 5 served no purpose, since other, later provisions, particularly article 8, dealt with the same issue.

17. Mr. VORSTER (South Africa) said that article 5 should reflect the new concepts which had emerged in environmental law, and he thus fully supported the proposal made in that regard by the Netherlands; they did nothing to upset the balance of the provision.

18. Mr. NGUYEN DUY CHIEN (Viet Nam) said that article 5 was the keystone of the draft convention and should be strengthened. The proposals made in that regard by Portugal and the Netherlands were interesting and should be carefully considered. On the other hand, he did not support the proposed amendments to paragraph 2.

19. Mr. HAMDAN (Lebanon) supported the statements by the representatives of Viet Nam and Slovakia and by the Expert Consultant. He endorsed the text of article 5 formulated by the Commission and favoured its adoption without amendment.

20. Mr. OBEID (Syrian Arab Republic) supported draft article 5 and agreed with the view expressed by Slovakia, Venezuela and Lebanon that article 5 was well balanced and that there was no need to amend paragraph 2 of the article.

21. Mr. HARRIS (United States of America) said he, too, agreed that articles 5, 6 and 7, which were the fruit of many years' reflection, struck a satisfactory balance. However, with regard to the purely formal aspects of article 5, he noted, first, that the reference in the first sentence of paragraph 1 to

utilization of an international watercourse in an equitable and reasonable manner by watercourse States in their respective territories implied utilization by watercourse States vis-à-vis other watercourse States, and not vis-à-vis individuals in their territory; and secondly, that the right to use a watercourse set forth in paragraph 2 implied a right operating within the limits of the watercourse State's territory.

22. Furthermore, while subscribing to the various principles - including the sustainable development principle, the precautionary principle and the ecosystem protection principle - that various delegations had proposed should be embodied in article 5, his delegation noted that there was no single definition of any of those principles that was acceptable to all States. Since article 5 was the cornerstone of the draft convention, it would be more appropriate to place the general principles in question in the preamble, in part IV or in article 6.

23. Mrs. DASKALOPOULOU-LIVADA (Greece) said that, as the cornerstone of the draft articles, article 5 must set forth the main principles underlying what was intended as a modern legal system to regulate the use of watercourses. She thus supported the proposals submitted by the Netherlands and Portugal with a view to reflecting the development of contemporary international law in article 5.

24. On the other hand, she did not favour amending paragraph 2, and considered that the most appropriate place for references to the various agreements would be in the general articles such as article 3.

25. Mr.BRODARD (Observer for Switzerland), after tracing the genesis of the principles set forth in articles 5, 6 and 7, said that the International Law Commission seemed to have ignored the process whereby they had evolved, inter alia, in assigning greater importance to the prohibition on causing harm (article 7) than to the principle of equitable and reasonable utilization (articles 6 and 7) - thereby rendering that principle largely inoperative, and in seeking to establish a system that favoured existing activities to the detriment of future activities. Water resources were becoming so scarce that any new activity, however slight in scope, might inflict significant harm on present users. As those users could complain under article 7, the existing activities would carry the day, and there would be no new deal in favour of the new user on the basis of the principle of equitable utilization. Furthermore, as the Commission's Special Rapporteurs had emphasized, economic and industrial activities linked to watercourses were generally more highly developed in downstream States than in upstream States. If more importance was assigned to article 7 than to article 5, and if the status quo and existing uses were favoured, downstream States would benefit at the expense of upstream States.

26. That being the case, he proposed that article 7 should simply be deleted. However, the harm caused by new uses should not be disregarded: that factor should figure in article 6. It could, of course, be objected that that solution encouraged the pollution of international watercourses. However, to counter that objection and restore some vitality to the anaemic concept of reasonable utilization, which the draft articles did not define, it would suffice to state in article 6 that a use causing significant harm to the ecosystem of an international watercourse was not reasonable utilization.

27. He therefore proposed, first, that article 6, paragraph 1 (d), should be amended to read "The harm caused by the use of the watercourse in one watercourse State to other watercourse States;"; and secondly, that a new paragraph 1 bis should be inserted in article 6 or article 5, worded thus: "A use which causes significant harm to the ecosystem of an international watercourse is not reasonable utilization." Lastly, article 7 should be deleted.

28. Mr. AL-ADHAMI (Iraq), noting that the Commission's commentary to article 5 stated that attaining an optimal result did not mean achieving the "maximum" use, the most technologically efficient use, or the most monetarily valuable use, expressed the hope that that idea would be spelled out in a separate paragraph of article 5, which he supported. His delegation would submit the text of its proposed new paragraph to the secretariat.

29. Mr. NUSSBAUM (Canada) said he did not think there were any grounds for the fear expressed by some delegations that the proposals submitted by the Netherlands and Portugal would disturb the balance established by article 5. On the contrary, the text of that article should be updated so as to take account of recent developments in international law and of the concepts of sustainable development and precaution embodied, inter alia, in the United Nations Framework Convention on Climate Change, the Agreement on straddling fish stocks and the Rio Declaration on Environment and Development. Without belittling the Commission's work on article 5, his delegation wished to point out that the origins of that provision dated back to the 1970s and 1980s, and even to the 1960s. It therefore supported the proposals made by Portugal and the Netherlands.

30. Mr. LOIBL (Austria) agreed with the representative of Canada that article 5 should reflect recent developments in international law, particularly those that had taken place since 1992. He therefore supported the proposal by the Netherlands and Portugal that a reference to the sustainable development and precautionary principles, and to ecosystems should be inserted in article 5, paragraph 1.

31. His delegation also considered, like the delegation of Germany, that the second sentence of paragraph 1 reflected a delicate balance between optimal utilization of the watercourse and adequate protection thereof, of which account would have to be taken at the drafting stage.

32. Mrs. ESCARAMEIA (Portugal) said she, too, fully supported the Netherlands proposal; inasmuch as the purpose of the debate was to agree on the fundamental aims of the text under review rather than to finalize it down to the smallest detail, either that proposal or the one made by her own delegation seemed acceptable.

33. With regard to the balance of article 5, her delegation, like a number of other delegations, considered that the principle of equitable and reasonable utilization and participation was a vague one. Although it was to be found in a number of other conventions, its practical application remained problematic. The concept of optimal utilization, found in the second sentence of article 5, paragraph 1, disturbed the balance of the paragraph. While such had not been

the Commission's intention, it would be possible to interpret the article as according preference to an economic approach, to the detriment of an ecological approach, thus running counter to many recent declarations and conventions on the question. In order to restore the balance of article 5, mention should therefore be made therein of the sustainable development and precautionary principles.

34. As for the placing of certain principles, article 5 was the cornerstone of the draft convention and it was consequently important that the fundamental principles underlying the convention should appear in that article. Although the principles in question were mentioned elsewhere in the draft articles, she wished them to be incorporated in article 5 and not relegated to a later point in the text. Furthermore, the very title of article 5 made it clear that that provision must lay down the major principles of equitable and reasonable utilization of watercourses.

35. Lastly, she wished to affirm that Portugal had no intention of shirking its obligations, and that on the contrary it had proposed various procedures that placed a considerable burden of responsibility for environmental protection on downstream States.

36. Mrs. VARGAS de LOSADA (Colombia) said that her delegation's position on article 5 had already been set forth in document A/51/275, but that it nevertheless supported the Turkish proposal concerning paragraph 2 of that article.

37. Ms. GAO Yanping (China) said that, like many other speakers, she considered article 5 to be the cornerstone of the draft articles. The existing wording satisfied her delegation for three reasons: it set forth a general principle and gave no precise indications regarding any given use; it established a proper balance between the rights and responsibilities of each watercourse State; and it promoted the use and exploitation of international watercourses.

38. Some delegations' proposals no doubt deserved more detailed consideration. Others concerned questions of detail and thus had no place in article 5. China suggested that the delegations that had drafted the various proposals should hold informal consultations with a view to reaching agreement on a draft text, which they would then submit to the Working Group of the Whole.

39. Mr. THUITA MWANGI (Kenya) said he fully concurred with the text of article 5 as currently drafted, and did not think there was any need to place more emphasis on the obligation to protect the environment, which was already expressly spelled out in the two paragraphs of article 5.

40. Mr. LALLIOT (France) said he doubted whether all States would place the same interpretation on the definition of equitable and reasonable utilization and participation given in article 5. He proposed that the wording should be based on that used in article 2, paragraph 2, of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

41. Mr. THAHIM (Pakistan) said that the text of article 5 was complete and acceptable. The expression "in an equitable and reasonable manner", which some

considered too vague, could be made more precise by inserting a reference to article 6. As for article 7, his delegation's observations and proposed amendments thereto were contained in document A/51/275.

42. Mrs. FLORES (Mexico) said that she, too, found the text of article 5 satisfactory. While her delegation endorsed the proposals made by the Netherlands and Portugal, the same could not be said of the proposals made by Turkey and Colombia, which might jeopardize the balance achieved by the Commission.

43. Mr. WELBERTS (Germany) said he endorsed the observations and proposals made by the observer for Switzerland and the representative of Portugal, who saw protection of the environment as a matter that concerned the entire planet. Upstream and downstream States thus had the same obligations in that regard. The future framework convention should lay down the strictest standards: it was precisely because article 5 was a key provision that references to sustainable development and protection of the environment should be inserted therein. On the other hand, paragraph 2, which described the elements of equitable participation, should not be amended.

44. Mr. AL-HAYEN (Kuwait) said he favoured retaining paragraph 2 of article 5, the wording of which was satisfactory and should not be altered.

45. Mr. ISKIT (Turkey) said that, unlike the delegation of Portugal, he thought that article 5, paragraph 1, favoured ecological issues at the expense of economic issues, as adequate protection of the watercourse was the criterion that determined the optimal character of the utilization and benefits. He requested the Expert Consultant's opinion on the matter. He emphasized that his proposal had been, not simply to delete paragraph 2, but to amend the close of that paragraph by referring to watercourse agreements concluded by the riparian States. Far from seeking to change the balance of the article, his proposal was aimed at preserving the nature of the framework convention, which must set forth the main principles without going into details.

46. Mr. ROSENSTOCK (Expert Consultant) drew attention to paragraphs (3) and (4) of the Commission's commentary to article 5, which explained the expression "in an equitable and reasonable manner".

47. Mr. MORSHED (Bangladesh) said he endorsed the view expressed by the representative of Hungary that any utilization that caused harm could not be equitable or reasonable. Amending the article in the way proposed by Turkey might introduce an imbalance; furthermore, the duty to cooperate was a principle of general international law and not a question of detail to be left to the discretion of the parties to a given watercourse agreement.

48. Mrs. ESCARAMEIA (Portugal), endorsing the explanations given by the Expert Consultant, said that it was precisely because of the importance attached by the Commission to ecological considerations and sustainable development that she proposed that those issues should be mentioned in the text and not merely in the commentary.

49. Mr. CALERO RODRIGUES (Brazil) said that he could not support the Turkish proposal. If reference was made to watercourse agreements, it might be supposed that only States that had concluded an agreement were obliged to cooperate. That, however, was not the case; it was precisely the general nature of the obligation that made it possible to preserve the balance between the right of utilization and the duty to cooperate.

50. Mrs. FERNÁNDEZ de GURMENDI (Argentina) endorsed the Portuguese proposal aimed at strengthening the obligatory character of article 5, paragraph 1. Similarly, she proposed that a more binding formulation should be used in article 6, paragraph 1, and that in paragraph 2 of that article the expression "when the need arises", which might give rise to controversy, should be deleted.

51. Mr. MANONGI (United Republic of Tanzania) said that the existing wording of article 5 was balanced and appropriate. However, if delegations felt sufficiently strongly, it might be possible to add more details in article 6, but not in article 5, which must remain general in scope.

52. Mr. CHAR (India) said that the balance achieved by the Commission in article 5 was entirely satisfactory; it would therefore be better not to amend the text. The principles of protection of the environment and sustainable development were certainly very important, but they had no place in that article. If it was absolutely essential to incorporate them in the future convention, it would be better to insert them in article 6 or in part IV of the draft articles.

53. Mr. MANNER (Finland) proposed that a general statement should be inserted in the chapeau of article 6 to the effect that the relative value to be accorded to the various factors must be determined with a view to attaining sustainable development of the watercourse as a whole, and having special regard to the requirements of vial human needs, and particularly of the dependency of the population on the watercourse. It should also be spelled out that account must be taken of the needs and interests of future generations when making any cost-effect calculation.

54. Mr. ISKIT (Turkey) said that article 6, which gave substance to the principle of equitable and reasonable utilization, was acceptable. However, as touched upon in his country's observations concerning the second sentence of article 5, paragraph 1, the word "optimal" should be inserted in the chapeau of article 6. Also, for precision's sake, the word "pedological", covering the structure and quality of soil, should be added to paragraph 1 (a), and the contribution of water by riparian States to the watercourse should be specifically mentioned in an additional paragraph along the lines of article V, paragraph 2 (b), of the Helsinki Rules.

55. Mr. VORSTER (South Africa), while endorsing the Finnish proposal, proposed that article 6, paragraph 1 (c), should be amended by adding to it the following phrase: "with particular emphasis on the requirements of such populations for basic domestic needs", for specific mention must be made of that particular basic human need. It would also be valuable to specify in paragraph 1 (e) that the possibility expressed by the adjective "potential", far from referring to a

remote hypothesis, referred to uses that were virtually certain to become a reality.

56. Mrs. ESCARAMEIA (Portugal), referring to the observations made by her delegation in document A/51/275 concerning article 6, said that it was important to refer to the principle of sustainable development in the chapeau of that article, a solution which would also contribute to the hierarchical ranking of factors sought by the delegation of Finland.

57. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that while endorsing the Finnish proposal to refer in article 6, paragraph 2, to the concept of "vital human needs" contained in article 10, paragraph 2, she nevertheless considered that that concept was too vague and would also run counter to the principle whereby there was no hierarchical relationship among the factors listed. She thus proposed that in article 10, paragraph 2, and, consequentially, in the chapeau of article 10, that concept should be replaced by the more everyday concept of "domestic needs". She also proposed that the concept of a dependent population should be spelled out in article 6, paragraph 1 (c), by means of a reference to that population's supply needs. The obligation set forth in the chapeau to take account of all relevant factors and circumstances should also be made stricter, and the phrase "when the need arises" should be deleted from article 6, paragraph 2.

58. Mr. PRANDLER (Hungary), said that while accepting the current wording of article 6, he broadly concurred with the Finnish proposal to embody the principle of sustainable development in the chapeau of that article. With regard to the formulation of the proposal as a whole, it seemed to matter little whether the expression "vital human needs" proposed by Finland or the expression "domestic needs" preferred by Argentina was the one adopted.

59. Mr. ROSENSTOCK (Expert Consultant), referring to the various proposals made by delegations concerning article 6, said that unlike article 5, which was intended to be prescriptive, article 6 proposed guidelines regarding the factors to be taken into account with a view to using watercourses in an equitable and reasonable manner. The terms "requires" or "shall" were simply drafting options, and could be amended. On the other hand, the expression "when the need arises" was of value in that it showed that there was no need to enter into consultations in every circumstance, as there were cases when that would be unnecessary.

60. Moreover, it must not be forgotten that the Commission had deliberately avoided establishing a hierarchy among the factors, in view of the great diversity of watercourses throughout the world. Those factors varied in importance from one watercourse to another. With regard to the expression "vital human needs", it was no doubt worth recalling that paragraph (4) of the commentary to article 10 obliged watercourse States to pay special attention to providing sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation. That formulation, which provided a plausible interpretation of the concept of vital human needs, should make it possible to rectify the lack of precision for which the concept had been criticized; in any case the concept of "basic domestic needs" was equally imprecise.

61. Mr. ŠMEJKAL (Czech Republic) said that, while satisfied with the wording of article 6 as a whole, he agreed with the Expert Consultant that it would not be proper to establish a hierarchy among the factors to be taken into account, as those factors were likely to vary from time to time and from place to place. However, he proposed amending paragraph 1 (d) so as to retain, in addition to the effects of the uses, the advantages they procured. Furthermore, he suggested amending paragraph 1 (g) so as to take account also of the cost of the alternatives, using the expression "of corresponding value and costs", for in its commentary to that article the Commission had referred to the cost-effectiveness of uses. It had thus clearly intended to cover the notion of cost in article 6.

62. Mr. SABEL (Israel), said that, while appreciating the Expert Consultant's explanation concerning the absence of a hierarchy among the various relevant factors, he thought that there was one factor, namely, adequate supply of drinking water, that was of greater importance, and should be mentioned in article 6. The various proposals on the matter could no doubt be combined, for example, by inserting in paragraph 1 (b) the words: "in particular, the vital human needs for an adequate supply of domestic water".

63. Mrs. VARGAS de LOSADA (Colombia), referring to her country's written observations contained in document A/51/275, said that the proposal to give priority to vital human needs, in particular provision of drinking water, was consistent with her delegation's proposal concerning article 10; the latter article was the most appropriate place for such a formulation.

64. Mr. DE VILLENEUVE (Netherlands) said he supported the Finnish proposal as amended by the delegations of Argentina and Israel, as well as the proposal by Portugal and Finland to embody the principle of sustainable development in article 6. However, the adoption of such a course should not rule out the possibility of embodying that principle in article 5, which was in fact where it clearly belonged. Lastly, he agreed with the Czech delegation that account should be taken of the costs of all other potential uses.

65. Mr. NEGA (Ethiopia) said he concurred with the Finnish proposal to embody the concepts of sustainable development and vital human needs in the chapeau of article 6. Like the delegation of Israel, he also thought it was necessary to make the latter concept more explicit by referring to the need for food security or self-sufficiency in food, which also constituted a vital human need. He also endorsed the Turkish proposal to include among the relevant factors the contribution of water by each State to the watercourse.

66. Mr. WELBERTS (Germany) said that, while endorsing the Finnish proposal concerning article 6 as amended by the delegations of Israel and Argentina, which supplemented the Netherlands proposal concerning article 5, he nevertheless considered that the latter article was the most appropriate place to set forth new principles. Furthermore, he saw no point in the Indian proposal to insert the words "in the territory of each watercourse State", given that conventions of the type under consideration were supposed to settle questions whose implications went beyond State borders.

67. Mr. CRUZ DE ALMEIDA (Portugal) said that the solution proposed by the delegation of Israel to the problem posed by the expression "vital human needs" was preferable to the Finnish proposal, which might disturb the balance established by article 6. As for the proposal to refer to the contribution of water by States to the watercourse, to do so would call into question the historical rights of riparian States and might thus lead to serious problems.

68. Mr. VARSO (Slovakia) said he agreed with the Expert Consultant that there was no case for amending the substance of article 6, even though the proposal by the Czech Republic merited study. In any case, economic considerations should not be favoured at the expense of ecological factors, vice versa, so as not to disrupt the balance of the article.

69. Mr. RAO (India), replying to the delegation of Germany, said that his proposal was based on the Helsinki Rules, the authors of which had deemed it proper to specify in article V that it covered the territories of the watercourse States by using the expressions "of each basin State" or "in each basin State", inter alia, in paragraph 2, subparagraphs (b), (e), (f) and (g), of that article. He also considered it necessary to make the concept of vital human needs more precise by referring to the supply of drinking water and of food. Lastly, it seemed to him that account should be taken of the costs of uses, as proposed by the Czech delegation.

70. Mr. HARRIS (United States of America) said that the text of article 6 should be amended as little as possible. If the idea was to establish in that article an indicative list of contingent factors, nothing was to be gained by adding other factors, least of all in the chapeau of the article, for fear of sacrificing the clarity of the provision.

71. Mrs. MEKHEMAR (Egypt) agreed with the United States delegation that there was no call to add other factors to article 6 and that favouring some States at the expense of others must be avoided at all costs.

72. Mr. NGUYEN DUY CHIEN (Viet Nam) said he shared the view of the delegation of Portugal that the contribution of water by riparian States to the watercourse should not be included in article 6.

73. Mr. OBEID (Syrian Arab Republic) reaffirmed the importance of the concept of vital human needs and agreed that other factors should not be added to article 6, which was very well balanced.

74. Mr. THAHIM (Pakistan) said that the integrity of article 6 must be preserved has the article was global in scope.

75. Mr. RAO (India) said he agreed with the United States representative that prudence dictated not altering the text of article 6, which listed general factors, thereby introducing some flexibility in the choice of factors to be taken into account when appropriate. In any case, a factor such as the contribution of water was, and always would be, present in such a case. In short, there was no point in assigning a particular weight to any one factor.

76. Mr. ISKIT (Turkey) endorsed the United States suggestion that the chapeau of article 6 should be amended as little as possible. The proposal concerning the contribution of water by riparian States seemed to him to bear no relation to alleged historical rights over watercourses, a concept which in his view had no basis in international law, as the representative of India had pointed out.

The meeting rose at 6.10 p.m.